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TABLE OF CONTENTS

TABLE OF AUTHORITIES	vi
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF FACTS.....	3
POINTS RELIED ON.....	22
ARGUMENT	26

POINT I

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT’S PETITION ON THE GROUND THAT APPELLANT’S NOTICE LETTERS WERE MAILED ON AUGUST 27, 2007 AFTER A PURPORTED ONE-YEAR REDEMPTION PERIOD PURPORTEDLY EXPIRED ON AUGUST 26, 2007, AND WERE PURPORTEDLY DEFECTIVE AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (A) RELEVANT CASE LAW, INCLUDING, WITHOUT LIMITATION, CONSTITUTIONALLY BINDING PRECEDENT DECIDED BY THIS COURT HAS HELD THAT THE TIME PERIOD SPECIFIED IN WHAT IS NOW CODIFIED IN SUBSECTION 1 OF SECTION 140.340, RSMO, GRANTS DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES A TIME PERIOD WHEN THEY HAVE AN ABSOLUTE RIGHT OF REDEMPTION (WHICH IS CURRENTLY ONE YEAR FROM THE TAX SALE), AND THAT THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES CONTINUE TO

HAVE THE RIGHT TO REDEEM THEIR INTEREST FROM THE TAX SALE AFTER THAT ABSOLUTE PERIOD UNTIL THE TAX SALE PURCHASER IS EITHER AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED TO THE PROPERTY OR THE TAX SALE CERTIFICATE EXPIRES AT THE TIME SPECIFIED IN WHAT IS NOW CODIFIED IN SECTION 140.410, RSMO (WHICH IS CURRENTLY TWO YEARS FROM THE TAX SALE), AND (B) ANY PURPORTED DEFECTS IN NOTICING WERE NOT A GROUND TO INVALIDATE THE COLLECTOR'S DEED UNDER SECTION 140.520, RSMO..... 26

POINT II

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT'S PETITION ON THE GROUND THAT APPELLANT'S NOTICE LETTERS DID NOT INFORM RESPONDENTS HOW LONG THEY HAD TO EXERCISE THEIR RIGHT TO REDEEM OR BE FOREVER BARRED FROM DOING SO, AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (A) SECTION 140.405, RSMO, WAS DRAFTED TO INTEGRATE WITH RELEVANT CASE LAW ESTABLISHING THE *HOBSON* REDEMPTION PERIOD; (B) THERE IS NO UNIVERSALLY APPLICABLE REDEMPTION PERIOD ALLOWING TAX SALE PURCHASERS TO PROVIDE ADVANCE NOTICE OF THE EXPIRATION OF THE REDEMPTION RIGHTS OF DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES, AS VARIOUS STATUTES PROVIDE FOR SPECIAL RIGHTS

OF REDEMPTION THAT VARY FROM THE *HOBSON* REDEMPTION PERIOD DEPENDING UPON FACTS AND CIRCUMSTANCES THAT THE TAX SALE PURCHASER CANNOT KNOW OR WOULD KNOW ONLY WITH GREAT DIFFICULTY AT THE TIME THE SECTION 140.405 NOTICE IS SENT; (C) TAX SALE PURCHASERS CANNOT GIVE ADVANCE NOTICE OF THE TIME WHEN THEY MAY BE AUTHORIZED TO ACQUIRE A COLLECTOR’S DEED, AS THE DATE, IF ANY, WHEN ALL LAWFUL REQUIREMENTS HAVE BEEN SATISFIED AUTHORIZING THE TAX SALE PURCHASER TO ACQUIRE A COLLECTOR’S DEED CANNOT BE KNOWN IN ADVANCE; (D) NEITHER SECTION 140.405, RSMO, NOR CONSTITUTIONAL PRINCIPLES OF DUE PROCESS REQUIRE A TAX SALE PURCHASER TO PROVIDE ADVANCE NOTICE OF THE TIME LIMITS APPLICABLE FOR REDEMPTION, THE SPECIFIC PROCEDURES THAT MUST BE FOLLOWED, OR ANY OTHER DETAILS ATTACHING TO THE RIGHT OF REDEMPTION FROM THE TAX SALE; (E) ANY PURPORTED DEFECTS IN NOTICING WERE NOT A GROUND TO INVALIDATE THE COLLECTOR’S DEED UNDER SECTION 140.520, RSMO; AND (F) THE NOTICE LETTERS MAILED AUGUST 27, 2007, INFORMED THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES OF THEIR RIGHT TO REDEEM, WHICH IS ALL THAT IS REQUIRED BY SECTION 140.405, RSMO.

.....61

POINT III

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT’S PETITION WITHOUT MAKING MATERIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY APPELLANT, BECAUSE SUCH FINDINGS AND CONCLUSIONS ARE REQUIRED BY RULE 73.01 AND SUCH LACK OF FINDINGS OF FACT AND CONCLUSIONS OF LAW MATERIALLY AFFECTS THE MERITS OF THE ACTION AND/OR INTERFERES WITH APPELLATE REVIEW.

.....	108
CONCLUSION	117
CERTIFICATE OF SERVICE.....	118
COMPLIANCE CERTIFICATION.....	119

TABLE OF AUTHORITIES

FEDERAL CONSTITUTIONAL PROVISIONS

Takings Clause, U.S. Const. Amends. V and XIV.....	19, 114
Due Process Clause, U.S. Const. Amend. XIV.....	19, 20, 58, 62, 72, 107, 114

FEDERAL STATUTES

11 U.S.C. § 108(b)	66
18 U.S.C. § 3613	64, 66
26 U.S.C. § 7425	64, 66

FEDERAL REGULATIONS

26 C.F.R. § 301.7425-1	64
26 C.F.R. § 301.7425-2	64
26 C.F.R. § 301.7425-3	64
26 C.F.R. § 301.7425-4	64

MISSOURI CONSTITUTIONAL PROVISIONS

Due Process Clause, Mo. Const. art. I, § 10.....	20, 58, 72, 114
Mo. Const. art. V, § 2.....	47
Mo. Const. art. V, § 10.....	2, 48
Mo. Const. art. X, § 13.....	58-59, 59

MISSOURI STATUTES

1933 Mo. Laws 432-33	28
----------------------------	----

1939 Mo. Laws 851-52	28
Administrative Procedure Act, Chapter 536, RSMo	19, 20, 21
Chapter 475, RSMo.....	65
Chapter 524, RSMo.....	18
Conference Committee Substitute for House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 117, First Regular Session, 96 th General Assembly	30, 63
House Committee Substitute for Senate Bill No. 1012, Second Regular Session, 92 nd General Assembly.....	30
House Committee Substitute for Senate Committee Substitute for Senate Bill No. 295, First Regular Session, 92 nd General Assembly.....	30, 33, 34, 35, 43, 82
Jones-Munger Act, Chapter 140, RSMo	20, 27, 28, 30, 31, 34, 35, 38, 39, 43, 45, 46, 49, 77, 82, 83, 95, 100, 114
Section 1.020(11), RSMo	5
Section 1.040, RSMo	5
Section 1.120, RSMo	34, 35, 42, 77
Section 140.100, RSMo	15
Section 140.150, RSMo	28, 59
Section 140.170, RSMo	59
Section 140.250, RSMo (either pre-HB 1316 or post-HB 1316 versions) ...	29, 38, 39, 41

Section 140.290, RSMo	10, 11, 105
Section 140.310, RSMo (either pre-HB 1316 or post-HB 1316 versions)	
.....	30, 33, 34, 35, 42, 80, 81, 82, 83
Section 140.330, RSMo	18, 30
Section 140.340, RSMo (either pre-HB 1316 or post-HB 1316 versions)	
.....	15, 19, 22, 26, 27, 28, 29, 30, 31,
	32, 34, 35, 38, 42, 44, 45, 46, 47, 49, 64, 65, 74, 75, 77, 78, 79, 80, 81, 82, 84, 94, 95, 98
Section 140.350, RSMo	65, 66
Section 140.360, RSMo	28, 30, 32, 34, 35, 42, 74, 78, 79, 82
Section 140.405, RSMo (either pre-HB 1316 or post-HB 1316 versions)	
.....	8, 9, 10, 11, 20,
	22, 23, 24, 26, 27, 29, 37, 43, 44, 45, 48, 50, 54, 58, 59, 60, 61, 62, 64, 66, 67, 68, 69, 70, 71,
	72, 75, 76, 77, 79, 89, 90, 91, 92, 93, 95, 96, 97, 103, 104, 105, 106, 107, 110, 114, 115, 116
Section 140.410, RSMo (either pre-HB 1316 or post-HB 1316 versions)	
.....	17, 22-23, 26-27, 28, 29-30, 30, 31, 33, 34, 35, 42, 63, 64, 69, 74, 79, 80, 81, 82, 84
Section 140.420, RSMo (either pre-HB 1316 or post-HB 1316 versions)	
.....	28, 30, 32, 34, 35, 41, 42-43, 51, 63, 82, 100
Section 140.440, RSMo	63, 100
Section 140.460, RSMo	51, 52, 100, 101
Section 140.520, RSMo	

.....	23, 24, 27, 50, 51, 53, 54, 58, 59, 60, 62, 76, 100, 101, 103, 107, 113, 115, 116
Section 140.550, RSMo	76
Section 140.570, RSMo	76
Section 140.580, RSMo	18
Section 140.660, RSMo (repealed)	63-64
Section 347.163, RSMo	113
Section 443.290, RSMo.....	97
Section 443.380, RSMo	52
Section 443.410, RSMo	97
Section 443.420, RSMo	97
Section 443.430, RSMo	97
Section 443.440, RSMo	97
Section 536.063, RSMo	19
Section 536.067, RSMo	19
Section 7576, RSMo 1889	56
Section 11130, RSMo 1939	38
Section 11135, RSMo 1939	33
Section 11145, RSMo 1939	31
Section 11147, RSMo 1939	32
Section 11148, RSMo 1939	33

Section 11149, RSMo 1939	32
Section 11521, RSMo 1909	53, 76
Sections 443.290 to 443.440, RSMo.....	97
Sections 527.010-527.130, RSMo.....	18
Sections 527.150-527.250, RSMo.....	18
Senate Committee Substitute for House Committee Substitute for House Bill No. 1316, Second Regular Session, 95 th General Assembly	
.....	29, 30, 35, 38, 41, 43, 69, 70, 71, 82, 97

MISSOURI SUPREME COURT RULES

Rule 73.01	25, 108, 109, 117
Rule 74.01(b)	2
Rule 74.04	21
Rule 78.07	25, 109
Rule 83.02	2
Rule 84.06(c)	114
Rule 84.13(d)	27
Rule 87	18
Rule 89	18
Rule 93.01	18

MUNICIPAL CHARTER PROVISIONS

Kansas City Charter, Article V, § 14	55
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CASE LAW

<i>Amond v. Ron York & Sons Towing</i> , 302 S.W.3d 708 (Mo. App., E.D. 2009)	27
<i>Arrington v. Helms</i> , 438 F.3d 1336 (11 th Cir. 2006)	89, 92
<i>Atchison v. Retirement Board of Police Retirement System of Kansas City</i> , 343 S.W.2d 25 (Mo. 1961)	34, 42
<i>Ballard v. Hunter</i> , 204 U.S. 241, 27 S.Ct. 261, 51 L.Ed. 461 (1908)	86
<i>Berlin v. Pickett</i> , 100 S.W.3d 163 (Mo. App., W.D. 2003)	110, 113
<i>Bishop v. Bd. of Educ. of Francis Howell Sch. Dist.</i> , 575 S.W.2d 827 (Mo. App., E.D. 1978),	92-93, 93, 96
<i>Boston v. Williamson</i> , 807 S.W.2d 216 (Mo. App., W.D. 1991)	23, 25, 35-36, 37, 41, 44, 46, 48, 62, 63, 64, 67, 74
<i>Brock v. Caldwell</i> , Appeal No. SD31206 (Mo. App., S.D. January 27, 2012) (may be subject to post-opinion motions or applications).....	70, 75
<i>Bullock v. Peoples Bank of Holcomb</i> , 351 Mo. 587, 173 S.W.2d 753 (Mo. 1943)	35, 37, 40, 45, 46, 47, 67, 74
<i>Burris v. Bowers</i> , 181 S.W.2d 520 (Mo. 1944).....	38
<i>Campbell v. Siegfried</i> , 823 S.W.2d 156 (Mo. App., E.D. 1992).....	36, 37-38, 46, 68, 74
<i>Cedarbridge LLC v. Eason</i> , 293 S.W.3d 462 (Mo. App., E.D. 2009)	

.....	33, 45, 46, 47, 48, 49, 51, 66, 67, 68, 70, 73, 75, 82, 83, 91, 93
<i>City of West Covina v. Perkins</i> , 525 U.S. 234, 119 S.Ct. 678, 142 L.Ed.2d 636 (1999)	
.....	84, 88, 89, 92, 93, 96
<i>Coffman v. Coffman</i> , 300 S.W.3d 267 (Mo. App., W.D. 2009).....	109
<i>Cohen v. Cohen</i> , 178 S.W.3d 656 (Mo. App., W.D. 2005)	116
<i>Country Club of the Ozarks LLC v. CCO Investments, LLC</i> , 338 S.W.3d 325 (Mo. App., S.D. 2011).....	108-109
<i>Covey v. Town of Somers</i> , 351 U.S. 141, 76 S. Ct. 724, 100 L. Ed. 1021 (1956).....	65
<i>Crossland v. Thompson</i> , 317 S.W.3d 635 (Mo. App., S.D. 2010).....	45, 69, 73, 90
<i>Deming v. Metropolitan Engineering & Construction Co.</i> , 154 Mo. App. 540, 136 S.W. 740 (K.C. 1911).....	75
<i>Doe v. Roman Catholic Archdiocese of St. Louis</i> , 311 S.W.3d 818 (Mo. App., E.D. 2010)	
.....	47
<i>Dorman v. Dorman</i> , 91 S.W.3d 167 (Mo. App., W.D. 2002).....	25, 116
<i>Drake Development & Construction LLC v. Jacob Holdings, Inc.</i> , 306 S.W.3d 171 (Mo. App., S.D. 2010).....	45, 46, 48, 49, 68, 68-69, 73, 75, 90, 91, 93
<i>Dusenbery v. United States</i> , 534 U.S. 161, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002)	
.....	88, 96
<i>Estate of Oden v. Oden</i> , 905 S.W.2d 914 (Mo. App., E.D. 1995)	52
<i>Flagg Brothers v. Brooks</i> , 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978)	

.....	96-97
<i>Glasgow Enterprises, Inc. v. Brooks</i> , 234 S.W. 3d 407 (Mo App E.D. 2007).....	45, 90, 98
<i>Glasgow Realty LLC v. Withington</i> , 345 F.Supp.2d 1025 (E.D. Mo., 2004).....	66
<i>Grayden v. Rhodes</i> , 345 F.3d 1225 (11 th Cir. 2003)	89
<i>Hames v. Bellistri</i> , 300 S.W.3d 235 (Mo. App., E.D. 2009)	
.....	45, 46, 47, 49, 66, 67, 70, 73, 75, 82, 90, 91, 93
<i>Harpagon MO LLC v. Bosch</i> , Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (no longer having any legal effect as same is now pending in this Court as on original appeal)	
.....	2, 36, 38, 48, 63, 64-65, 68, 72, 75, 89, 93
<i>Harpagon Mo, LLC v. Clay County Collector</i> , 335 S.W.3d 99 (Mo. App., 2011)	
.....	36, 38, 41, 46, 67, 72, 74, 89, 93
<i>Hobson v. Elmer</i> , 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942)	
.....	23, 24, 28-34, 35, 36, 37, 40, 41, 42, 43, 44, 45, 46, 47, 48, 57, 60, 61, 62, 67, 69, 71, 74, 77, 78, 79, 80, 81, 82, 84, 98, 99, 102, 106, 107, 115, 116
<i>Hutchison v. Cannon</i> , 29 S.W.3d 844 (Mo. App., S.D. 2000)	75
<i>Investment Corporation of the Virginias, Inc. v. Acquaviva</i> , 302 S.W.3d 195 (Mo. App., E.D. 2009).....	82
<i>Jackman v. Century Brick Corporation of America</i> , 412 S.W.2d 111 (Mo. 1967) ...	34, 42
<i>Jolly v. Clarkson</i> , 157 S.W.3d 290 (Mo. App., S.D. 2005)	52
<i>Jones v. Flowers</i> , 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006)	64, 71, 97

<i>Journey v. Miler</i> , 363 Mo. 163, 250 S.W.2d 164 (Mo. Banc 1952)	29, 39, 42
<i>Keylien Corporation v. Johnson</i> , 284 S.W.3d 606 (Mo. App., E.D. 2009)	
.....	27, 27-28, 29, 45, 46, 47, 49, 66, 67, 68, 70, 73, 82, 90, 91, 93, 98
<i>Lohr v. Cobur Corporation</i> , 654 S.W.2d 883 (Mo. banc 1983), <i>subsequent appeal</i> , 721	
S.W.2d 763 (Mo. App., E.D. 1986)	86
<i>Longyear v. Toolan</i> , 209 U.S. 414, 28 S.Ct. 506, 52 L.Ed. 859 (1908).....	85-86
<i>Lattier v. Lattier</i> , 857 S.W.2d 548 (Mo. App., E.D. 1993).....	114
<i>M & P Enterprises, Inc. v. Transamerica Financial Services</i> , 944 S.W.2d 154 (Mo. banc	
1997)	28, 29, 38, 44, 58, 103
<i>Matthews v. Eldridge</i> , 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)	87-88, 88
<i>Mennonite Board of Missions v. Adams</i> , 462 U.S. 791, 103 S.Ct. 2706, 77 L. Ed. 2d 180	
(1983)	85, 86, 87
<i>Mitchell v. Atherton</i> , 563 S.W.3d 13 (Mo. banc 1978)	52, 59, 100
<i>Mullane v. Cent. Hanover Bank & Trust Co.</i> , 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950)	
.....	88, 89, 92, 94-95, 96
<i>Ndegwa v. KSSO, LLC</i> , Appeal No. ED96315 (Mo. App., E.D. October 11, 2011) (no longer	
having any legal effect as same is now pending in this Court as on original appeal)	
. 2, 36, 37, 38, 42, 48, 70, 73, 74, 77, 78, 79, 81, 82, 83, 84, 85, 87, 88, 94, 95, 96, 98, 99	
<i>Phelps v. Brumback</i> , 107 Mo. App. 16, 80 S.W. 678 (K.C. 1903)	54, 55
<i>Powell v. City of Creve Coeur</i> , 452 S.W.2d 258 (Mo. App., St. L. 1970)	

.....	35, 37, 41, 46, 48, 67, 74
<i>Queathem v. Queathem</i> , 712 S.W.2d 703 (Mo. App., E.D. 1986)	52
<i>Roberts v. Glasgow</i> , 860 S.W.2d 26 (Mo. App., E.D. 1993)	65
<i>Robertson v. Robertson</i> , 15 S.W.3d 407 (Mo. App., S.D. 2000)	52
<i>Scherleth v. Hardy</i> , 280 S.W.3d 47 (Mo. banc 2009)	58, 59, 64, 71, 82, 97, 103
<i>Schwartz v. Dey</i> , 665 S.W.2d 933 (Mo. Banc 1984), <i>subsequent appeal</i> , 780 S.W.2d 42 (Mo. Banc 1989)	93, 94
<i>Schwartz v. Dey</i> , 780 S.W.2d 42 (Mo. Banc 1989)	86
<i>Sell v. Ozarks Medical Center</i> , 333 S.W.3d 498 (Mo. App., S.D. 2011)	34, 42, 44, 82
<i>Shaw v. Armstrong</i> , 361 Mo. 648, 235 S.W.2d 851 (Mo. 1951) (<i>quoting</i> § 11130, RSMo 1939), <i>overruled on specified grounds</i> , <i>Journey v. Miler</i> , 363 Mo. 163, 250 S.W.2d 164 (Mo. Banc 1952)	39
<i>Sneil, LLC v. TYBE Learning Center, Inc. et al.</i> , Appeal No. ED96828 (Mo. App., E.D. February 28, 2012) (no longer having any legal effect as the same is before this Court as on original appeal)	
	2, 10, 36, 37, 42, 48, 54, 73, 74, 78, 79, 80, 81, 83, 84, 85, 87, 88, 96, 104
<i>Stadium West Properties LLC v. Johnson</i> , 133 S.W.3d 128 (Mo. App., W.D. 2004)	52, 54, 100, 101
<i>State v. Goodbar</i> , 297 S.W.2d 525 (Mo. 1957)	92, 93, 96

<i>State ex rel. Baumann v. Marburger</i> , 348 Mo. 164, 182 S. W.2d 163 (Mo. 1944)	
.....	35, 37, 38, 40, 45, 46, 47, 67, 74
<i>State ex rel. McGhee v. Baumann</i> , 349 Mo. 234, 160 S.W.2d 697 (Mo. Banc 1942)	
.....	28-29, 38-39, 39
<i>State ex rel. Howard v. Timbrook's Estate</i> , 240, Mo. 226, 144 S.W. 843 (1912)	
.....	53, 54, 76
<i>State ex rel. Stotts v. Farmers' & Merchants' Nat. Bank</i> , 144 Mo. 381, 46 S.W. 148 (1898)	
.....	56
<i>Strohm v. Boden</i> , 359 Mo. 573, 222 S.W.2d 772 (Mo. 1949)	
.....	35, 37, 40, 46, 47, 67, 74
<i>Taft v. McCulloch</i> , 135 Mo. 588, 37 S.W. 499 (1896).....	55-56
<i>Thurmon v. Ludy</i> , 914 S.W.2d 32 (Mo. App., E.D. 1996).....	52
<i>Trapf v. Lohr</i> , 666 S.W.2d 414 (Mo. Banc 1984), <i>appeal dismissed</i> , 469 U.S. 1013, 105 S.Ct. 423, 83 L.Ed.2d 351 (1984)	86
<i>United Asset Mgmt. Trust Co. v. Clark</i> , 332 S.W.3d 159 (Mo. App., W.D. 2010)	
.....	23, 24,
	27, 28, 29, 36, 38, 41, 46, 47, 48, 49, 62, 63, 64, 66, 67, 69, 70, 72, 74, 84, 85, 87, 89-93, 96
<i>U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)</i> , 437 B.R. 346 (Bankr., E.D.Mo. 2010).....	36, 38, 41, 46, 66, 67-68, 72, 74-75
<i>Valli v. Glasgow Enterprises, Inc.</i> , 204 S.W.3d 273 (Mo. App., E.D. 2006)	

.....	45, 68, 70, 75, 90, 98
<i>Wetmore v. Berger</i> , 354 Mo. 166, 188 S.W.2d 949 (Mo. 1945)	
.....	35, 37, 40, 46, 47, 67, 74
<i>York v. Authorized Investors Group, Inc.</i> , 931 S.W.2d 882 (Mo. App., E.D. 1996)	
.....	36, 38, 46, 68, 74

JURISDICTIONAL STATEMENT

This is an appeal from the Findings of Fact & Conclusions of Law Order and Judgment dated April 11, 2011 (hereinafter sometimes referred to as the “Judgment”), wherein the trial court denied Appellant any relief under Count I of Appellant’s Petition. LF at 625-633, 728-736. In part, Count I of Appellant’s Petition was an action to confirm the Collector’s Deed to Appellant of certain real estate (hereinafter sometimes referred to as “Parcel I”), located in the County of St. Louis, in the State of Missouri, commonly known as 3645 Marietta Drive, St. Louis, Missouri 63033, and more particularly described as:

PARCEL I:

A tract of land being the Easterly part of “Lot A” of MARIETTA PLAT 3, a Subdivision recorded in Plat Book 96, Page 91 of the St. Louis County Records and being more particularly described as follows: Beginning at the Southeast corner of said “Lot A”; thence in a Westerly direction along the Northerly line of Marietta Drive, 50 feet wide, and along a curve to the left having a radius of 460 feet a distance of 105.17 feet to a point of compound curvature; thence North 28 degrees 47 minutes 30 seconds West a distance of 179.60 feet to a point in the North line of said “Lot A”; thence South 89 degrees 41 minutes 30 seconds East along said line a distance of 186.28 feet

to a point being the Northeast corner of said "Lot A"; thence South 1 degree 39 minutes 30 seconds East along the Easterly line of said "Lot A" a distance of 141.47 feet to the point of beginning.

LF at 631-632, 734-735.

The Judgment is certified in accordance with Rule 74.01(b) as being final for purposes of appeal, as the Court found no just reason for delay with respect to the matters raised in Count I. LF at 632, 735.

In *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012) ordered this matter transferred to this Court under Missouri Supreme Court Rule 83.02. This Court has appellate jurisdiction over this matter under Mo. Const. art. V, § 10.1

1 *Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011), *Ndegwa v. KSSO, LLC*, Appeal No. ED96315 (Mo. App., E.D. October 11, 2011) and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012) have been transferred to this Court under Mo. Const. art. V, § 10, and are before this Court as on original appeal. The opinions of the intermediate appellate courts in those cases no longer have any legal effect. Appellant makes reference to the opinions of the intermediate appellate courts in those cases in this Brief not for their legal effect but to show how the intermediate appellate courts have viewed certain issues.

STATEMENT OF FACTS

The Trial Court's Findings of Fact

The trial court found that Appellant is a Delaware limited liability company. LF at 625. The trial court found that on August 28, 2006, the St. Louis County Collector offered Parcel I for sale as a first offering under the Jones-Munger Act. LF at 626. The trial court found that at the time of the tax sale, Parcel I was owned by Respondent TYBE Learning Center, Inc. (hereinafter sometimes referred to as "TYBE") under a General Warranty Deed dated on or about April 30, 2003 and recorded on or about May 1, 2003 at Book 14825 Page 1429 of the St. Louis County Records, wherein Jerry Austell and Carmen Austell, husband and wife, conveyed Parcel I to TYBE. LF at 626-627. The trial court found that Respondent Regions Bank (hereinafter sometimes referred to as "Regions Bank") held a recorded deed of trust on Parcel I dated April 30, 2003 and recorded May 1, 2003 in Book 14825 Page 1432 of the St. Louis County Records. LF at 626-627.

The trial court found that Appellant was the highest bidder for Parcel I at the first offering delinquent tax sale with a bid of \$41,700.00. LF at 627.

The trial court found that on August 27, 2007, Appellant sent a notice to TYBE and Regions Bank via certified mail, returned receipt requested, a true and correct copy of which is included within Plaintiff's Parcel I Trial Exhibit No. 8 (hereinafter sometimes referred to as the "Notice Letters" or "Notice Letter"). LF at 627.

The trial court found that on August 28, 2007, both TYBE and Regions Bank received the Notice Letters via certified mail. LF at 627.2 The trial court found that Appellant made no attempt to contact either TYBE or Regions Bank at any time prior to August 27, 2007. LF at 627.

The trial court found the following:

8. Plaintiff's Notice did not inform Tybe Learning Center, Inc. or Regions Bank how long they had to exercise their right to redeem or be forever barred from doing so. It provided neither a specific redemption period expiration date nor a number of days indicating the length of time Tybe Learning Center, Inc. and Regions Bank had to redeem the Property. Rather, the Notice provided as follows regarding redemption: "If you wish to redeem your interest in the above-referenced property, you should contact the Collection Division of the St. Louis County Department of Revenue ... Telephone (314) 615-4207, Fax (314) 615-5428."

LF at 628.

2 The Notice Letters that the Court found to have been received by Regions Bank on August 28, 2007 were not addressed to Regions Bank, but were addressed in part to Union Planters Bank, NA.

The trial court concluded the following:

4. The redemption period expired in this case on August 26, 2007. However, the notice sent by Plaintiff to Defendants in this case was mailed on August 27, 2007, one day following the expiration of the redemption period. Therefore, the notice was insufficient on this basis as well.

LF at 632.3

The trial court found that Gebhardt Real Estate and Legal Services LLC filed Certificate No. 08H541024 Affidavit with the St. Louis County Collector of Revenue's Office in support of Appellant's application for the Collector's Deed on September 6, 2007, and the trial court found the contents of that Affidavit. LF at 628-629. The trial court found that a copy of the Tax Sale Certificate of Purchase for Parcel I, a title search dated July 26, 2007, and the Notice Letters dated August 9, 2007 were attached to the Affidavit. LF at 630.

The trial court found that on December 6, 2007, Appellant acquired a Collector's Deed from the St. Louis County Collector, which was recorded on December 18, 2007 in Book 17747 Page 397 of the St. Louis County Records. LF at 630. The trial court found that TYBE and Regions Bank did not redeem their interests in Parcel I prior to the issuance of the Collector's Deed. LF at 630.

³ The trial court's determination of the expiration date of the purported one-year redemption period may not be consistent with §§ 1.020(11) and 1.040, RSMo.

Material Findings of Fact Requested by Appellant But Not Made by the Trial Court

Appellant's Second Request for Findings of Fact and Conclusions of Law as to Count I of Appellant's Petition (hereinafter sometimes referred to as the "Second Request") contains 46 requests for findings of fact. Appellant believes that the trial court made no specific findings of fact regarding Requests 2, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, and 36 of the Second Request.

Appellant believes that material omitted findings of fact include but are not limited to the following:

Findings Related to Notice: Where and to Whom Were the Notice Letters

Mailed: Request 18 of the Second Request asks the trial court to find whether Gebhardt Real Estate and Legal Services LLC caused Notice Letters dated August 9, 2007 to be mailed on August 27, 2007 via certified mail, return receipt requested, and via first class U.S. Mail to TYBE Learning Center, Inc., in care of The Advisory Group, Inc., at 1980 Concourse Drive, St. Louis, Missouri 63146, to TYBE Learning Center, Inc., at 3645 Marietta Drive, St. Louis, Missouri 63033, to Union Planters Bank, NA, at the St. Ann Banking Center, 10449 St. Charles Rock Road, St. Ann, Missouri 63074, to Any and All Occupants at 3645 Marietta Drive, St. Louis, Missouri 63033, to the Metropolitan St. Louis Sewer District at 2350 Market Street, St. Louis, Missouri 63103, to the Trustees of Marietta Plat 3 at General Delivery, Florissant, Missouri 63033, and to St. Louis County, Missouri, at 41 South Central Avenue, Clayton, Missouri 63105. LF at 429. No such finding was made by the trial court.

Findings Related to Notice: What Was the Content of the Notice Letters:

Request 19 of the Second Request asks the trial court to find whether said Notice Letters state, in part:

RE: Notice of Right of Redemption Regarding 3645 Marietta Drive, Florissant, Missouri 63033.

Greetings:

My firm has been retained by Sneil, LLC with respect to the Tax Sale Certificate of Purchase relating to real estate and the improvements thereon, commonly known as 3645 Marietta Drive, Florissant, Missouri 63033, located in the County of St. Louis and the State of Missouri, and more particularly described as:

A tract of land being the Easterly part of "Lot A" of MARIETTA PLAT 3, a Subdivision recorded in Plat Book 96, Page 91 of the St. Louis County Records and being more particularly described as follows: Beginning at the Southeast corner of said "Lot A"; thence in a Westerly direction along the Northerly line of Marietta Drive, 50 feet wide, and along a curve to the left having a radius of 460 feet a distance of 105.17 feet to a point of compound curvature; thence North 28 degrees 47

minutes 30 seconds West a distance of 179.60 feet to a point in the North line of said Lot "A"; thence South 89 degrees 41 minutes 30 seconds East along said line a distance of 186.28 feet to a point being the Northeast corner of said Lot "A"; thence South 1 degree 39 minutes 30 seconds East along the Easterly line of said Lot "A" a distance of 141.47 feet to the point of beginning.

Locator No. 08H541024

Pursuant to § 140.405, RSMo, a copy of which is enclosed herein for your perusal and incorporated herein, as if fully set forth, a title examination of this property was conducted by Phillip K. Gebhardt, which is evidenced in a Letter Report, dated as of July 26, 2007, a copy of which is enclosed herein for your perusal and incorporated herein, as if fully set forth.

On Monday, August 28, 2006, the Collector of Revenue of St. Louis County, Missouri, offered the tax lien certificate on the above-referenced real estate for sale in a delinquent tax sale.

This offering was the first or second offering of such property by the Collector of Revenue. At such sale, our firm's client, Snel, LLC, purchased the tax lien certificate on the above-

referenced real estate for the sum of \$41,700.00. A copy of the Tax Sale Certificate of Purchase evidencing this purchase is enclosed herein for your perusal and incorporated herein, as if fully set forth.

Pursuant to Section 140.405 of the Revised Statutes of Missouri (RSMo), this letter is to give you notice of the intention of our firm's client Sneil, LLC to acquire a collector's deed to the above-referenced property. A copy of Section 140.405, RSMo, is enclosed herein for your perusal.

If you wish to redeem your interest in the above-referenced property, you should contact the Collection Division of the St. Louis County Department of Revenue at 41 South Central Avenue (Street Level), Clayton, Missouri 63105, Telephone (314) 615-4207, Fax (314) 615-5428.

If you have any questions regarding this matter, please contact the undersigned.

LF at 429-431. No such finding was made by the trial court. But see Plaintiff's Parcel I Exhibits Nos. 2, 3, and 8.

Findings Related to Notice: Was a Copy of Section 140.405, RSMo, a Copy of the Letter Report, and a Copy of the Tax Sale Certificate Enclosed with the Notice Letters:

Requests 20, 21 and 22 of the Second Request respectively ask the trial court to make findings whether a copy of § 140.405, RSMo, a copy of the Letter Report dated as of July 26, 2007, and a copy of the Tax Sale Certificate of Purchase were enclosed with the Notice Letters mailed by Gebhardt Real Estate and Legal Services, LLC. LF at 431-432. No such findings were made by the trial court. But see Plaintiff's Parcel I Exhibits Nos. 2, 3, and 8.

Both the trial court and the Missouri Court of Appeals, Eastern District,⁴ failed to find that a copy of the Tax Sale Certificate of Purchase was attached to and incorporated into the

⁴ The Missouri Court of Appeals, Eastern District, stated the following in *Sneil, LLC v. TYBE Learning Center, Inc. et al.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012), Slip Op. at 9: "In the present case, Sneil did not bother with giving a date, but rather stated its intent to acquire a collector's deed, and referred Tybe and Regions to a copy of § 140.405 'for your perusal.'" Appellant takes the position that the Tax Sale Certificate of Purchase that was incorporated into and made a part of the Notice Letters states the *Hobson* Redemption Period in said Tax Sale Certificate of Purchase as "the time when the purchaser will be entitled to a deed for said land," § 140.290.2, RSMo, and for the reasons stated in this Brief (including the fact that Appellant could not give advance notice of the date when Appellant would be authorized to acquire a collector's deed to the subject property), Appellant could not "giv[e] a date." *Sneil*, Slip Op. at 9. The statement of intent to acquire a collector's deed in the Notice Letters is consistent with the reference to a "Deed of Conveyance" in the Tax Sale Certificate of Purchase. *See Sneil*, Slip Op. at 9.

Notice Letters, which states what is referred to in this Brief as the *Hobson* Redemption Period in the first paragraph of the following quotation from the Tax Sale Certificate of Purchase as “the time when the purchaser will be entitled to a deed for said land,” §140.290.2, RSMo:

At any time after the expiration of one year from the date of this sale, the above-named purchaser, his heirs or assigns, will upon application and compliance with the provisions of law pertaining thereto be entitled to a Deed of Conveyance for any real estate herein described, which shall not have been redeemed, provided, that on failure of the holder of this certificate to take our said deed, as entitled by law, and file the same of record within two years from the date of such sale, then and in that event the amount due such purchaser shall cease to be a lien on such lands so purchased as herein provided.

Section 140.405 R. S. Mo. 2001 Supp. Requires all purchasers to affect a title search on the real estate in question, and at least ninety days prior to issuance of a Collector’s Deed, the purchaser must notify, by certified mail, all persons with a lease lien or claim against the property including the last registered

owner at their last known addresses, of their right to redeem the real estate and make a notarized affidavit to the Collector stating they are in compliance with the statute. Failure of the purchaser to comply with this statute shall result in loss of all interest in said real estate.

Plaintiff's Parcel I Trial Exhibit No. 3, page 23; Plaintiff's Parcel I Trial Exhibit No. 8, page 13.

Findings Related to Notice: Whether Signed Green Cards Were Received:

Requests 23, 24, 25, 26, 27, and 28 of the Second Request ask the trial court to find whether Gebhardt Real Estate and Legal Services, LLC received back "Green Cards" from certified mail that was sent signed by various parties. No such findings were made by the trial court. But see Plaintiff's Parcel I Trial Exhibit No. 12; Tr. at 120.

Findings Related to Notice: Who Received the Notice Letters: Requests 29, 30, and 31 of the Second Request asks the trial court to make findings on whether TYBE, Union Planters Bank NA, or any other parties or entities received the Notice Letters. LF at 433. The trial court made findings that TYBE and Regions Bank received the Notice Letters, LF at 627, but the trial court did not make findings on whether Union Planters Bank or any other parties received the Notice Letters.

Findings Related to Notice: Whether Notice was Posted: Requests 32 and 33 of Appellant's Second Request asked the trial court to make findings on whether Kevin Rehg,

as process server for Gebhardt Real Estate and Legal Services, LLC, posted a Notice of Tax Sale and Possible Rights of Redemption for 3645 Marietta Drive, Florissant, Missouri 63033, on the 3645 Marietta Drive property on September 2, 2007, and the content of the notice that was posted. LF at 433-434. The trial court failed to make such findings. Kevin Rehg testified that he acted as a special process server in posting the Notice of Tax Sale and Possible Rights of Redemption for 3645 Marietta Drive, Florissant, Missouri 63033 on the 3645 Marietta Drive property on September 2, 2007. Plaintiff's Parcel I Trial Exhibit No. 9 was a copy of said Notice that was introduced into evidence. Tr. at 13-19. TYBE presented no evidence on this issue.

Findings Related to Notice: Whether Gebhardt Real Estate and Legal Services, LLC Received Back any Unclaimed or Undelivered Mail Containing the Notice Letters:

Request 34 of the Second Request asks the trial court to find whether Gebhardt Real Estate and Legal Services, LLC received back any unclaimed or undelivered mail containing the Notice Letters dated August 9, 2007 after mailing same on August 27, 2007. LF at 435. No such finding was made by the trial court.

Findings Related to the Credibility of Carmen Austell: Whether Respondents Contacted Phillip K. Gebhardt Regarding the Taxes Concerning Parcel I After Mailing of the Notice Letters on August 27, 2007:

Requests 35 and 36 of the Second Request asks the trial court to find whether representatives of TYBE or Union Planters Bank NA or Regions Bank contacted Phillip K. Gebhardt regarding the taxes concerning Parcel I after the

mailing of the Notice Letters on August 27, 2007. LF at 435. No such finding was made by the trial court.

Findings Related to the Credibility of Carmen Austell: Whether Carmen Austell Requested Redemption Figures from the Collector as of September 28, 2007: Request 43 of Appellant's Second Request asked the trial court to find whether Carmen Austell requested redemption figures from the St. Louis County Collection Division for Parcel I as of September 28, 2007. The trial court failed to make such findings. Page 26 of Plaintiff's Parcel I Trial Exhibit No. 3 (the St. Louis County Collector's file) is a redemption worksheet prepared by the Collector's Office to calculate the amount of funds needed to redeem Parcel I from the August 28, 2006 tax sale as of September 28, 2007. Tr. at 49-51. This page of Exhibit No. 3 indicates that Carmen Austell requested redemption figures, and that a representative of the St. Louis County Collector's Office contacted her by telephone with those figures. Tr. at 49-51, 81-82, 84-85. The proposed September 28, 2007 redemption date was not generated by the St. Louis County Collector's Office. Tr. at 85-86.

Other Evidence Before the Trial Court

Rich Robison, an employee in the St. Louis County Collector's Office for 39 years at the time of trial and the supervisor of the delinquent tax section of the St. Louis County Collector's Office since 1981, testified. Tr. at 19-94. Mr. Robison's duties include supervising the tax sale auction and supervising staff in the processing of tax sale purchases. Tr. at 20. Mr. Robison indicated that St. Louis County assigns a unique number, called a

locator number, to each parcel of real estate in the County, and that the locator number of 3645 Marietta Drive is 08H541024. Tr. at 21. Mr. Robison testified that St. Louis County collects real estate taxes under the Jones-Munger Act. Tr. at 21.

Mr. Robison testified that it is the practice of the St. Louis County Collector to send out real estate tax bills in the Fall of each year for the taxes due on December 31st. Tr. at 21-22. If these taxes are not timely paid, interest at the rate of two percent per month up to 18 percent per year is owed. Tr. at 22; see § 140.100, RSMo. Interest earned by the tax sale purchaser on a certificate of purchase after a tax sale is at most 10 percent, see § 140.340, RSMo, and only taxing authorities earn two percent per month up to 18 percent per year. Tr. at 30.

Delinquent tax notices are sent out in the Winter or early Spring each year if taxes are not paid by December 31st. Tr. at 22-23. If taxes are not paid for three consecutive years, it is the practice of the St. Louis County Collector to include the property in the first offering tax sale held the fourth Monday in August each year. Tr. 21-23. Mr. Robison indicated that waiting three years before including real estate in a first offering delinquent tax sale is a discretionary matter with the Collector. Tr. at 26. Before the August tax sale, notices are mailed in July of each year to the owners of property included in the tax sale that includes a flyer stating the property will be included in the tax sale if taxes are not paid. Tr. at 23-24. If envelopes from these mailings are returned, the envelope is included in the Collector's file and additional research is conducted on where to send notice. Tr. at 24-25.

If someone redeems their interest from the tax sale, the delinquent taxpayer or other interested party pays the Collector redemption funds. Tr. at 30-31. Because interest is earned on the tax sale certificate, the Collector must know the date when the delinquent taxpayer is redeeming in order to calculate the interest due and the total needed to redeem. Tr. at 31-32.

Before a collector's deed was issued in 2006 or 2007, the St. Louis County Collector would require the filing of an affidavit, a copy of the title search performed by the tax sale purchaser, the payment of recording fees, and the payment of subsequent taxes, as well as surrender of the original certificate of purchase. Tr. at 33-34.

It was the practice of the St. Louis County Collector not to automatically issue a collector's deed one year after the tax auction in 2006. Tr. at 29, 48. If more than one year passed and the tax sale purchaser had not met the requirements for issuance of a collector's deed, the Collector would allow the delinquent taxpayer or other interested parties to redeem. Tr. at 34-35, 48, 53, 57, 84-85, 91-92. Once the collector's deed is issued within two years of the tax sale, anyone wishing to redeem their interest would be refused. Tr. at 35. In this case, the Collector would have allowed the delinquent taxpayer or other interested parties to redeem until the issuance of the Collector's Deed on December 6, 2007. Tr. at 53, 92. According to the Collector's Office, in 2006 and 2007 the redemption period expired when the collector's deed was issued. Tr. at 35.

Nothing in the Collector's file with respect to Parcel I indicated that the normal mailings of tax bills did not occur with respect to Parcel I, and the Collector's file does not contain any returned envelopes or copies of returned envelopes. Tr. at 40-41.

The lack of a destination code on the 2005 tax bill included in the Collector's file means that the tax bills would have been sent to the property owner shown on the tax bill at the address shown on the tax bill and not to a lender. Tr. at 41.

The Tax Sale Certificate of Purchase issued by the St. Louis County Collector to Appellant with respect to Parcel I states, in part: "Last dated of eligibility for deed is 8/28/2008". LF at 45. Mr. Robison testified that this language on the Certificate means that if no deed is issued and recorded by August 28, 2008, the purchaser loses all interest in the property. Tr. at 45; see § 140.410, RSMo. The Tax Sale Certificate of Purchase states, in part: "At any time after the expiration of one year from the date of this sale, the above-named purchaser, his heirs or assigns will, upon application and compliance with the provisions of law pertaining thereto, be entitled to a deed of conveyance for any real estate herein described which shall not have been redeemed; provided that on the failure of the holder of this certificate to take out said deed as entitled by law and file the same of record within two years from the date of such sale, ... then and in that event, the amount due the purchaser shall cease to be a lien on such lands so purchased". Tr. at 45-46; Plaintiff's Parcel I Trial Exhibit No. 3, page 23; Plaintiff's Parcel I Trial Exhibit No. 8, page 13. Mr. Robison testified that the Certificate accurately described the practices and procedures used by the St.

Louis County Collector in 2007 to determine the duration of the right of redemption for properties for which a tax sale certificate has been issued. Tr. at 45-46.

Procedural Background

On February 27, 2008, Appellant filed a ten-count Petition concerning the title to five different parcels of real estate located in St. Louis County, Missouri. LF at 17-48. Count I of Appellant's Petition is an action to confirm a collector's deed conveying Parcel I to Appellant under § 140.330, RSMo, to quiet title to said real estate under §§ 527.150-527.250, RSMo, and Rule 93.01, and to declare the rights of the parties in Parcel I under §§ 527.010-527.130, RSMo, and Rule 87. LF at 22-26. Count II of Appellant's Petition is an action in ejectment with respect to Parcel I under § 140.580, RSMo, Chapter 524, RSMo, and Rule 89. LF at 26-27.

On June 30, 2008, Regions Bank filed its Answer to Counts I and II of Appellant's Petition. LF at 58-60. No counterclaim was filed by Regions Bank.

On November 21, 2008, Appellant filed its Motion for Separate Trial of Damages Issues and its first Request for Findings of Fact and Conclusions of Law as to Counts I and II of Plaintiff's Petition. LF at 62-75.

On December 18, 2008, TYBE filed its Amended Answer to Counts I and II of Appellant's Petition. LF at 76-79. Said Amended Answer contained the following affirmative defenses to Count I of Appellant's Petition: (1) TYBE alleged that Appellant purportedly is a foreign corporation based in Illinois, and that Appellant transacted business

in Missouri without a required certificate of authority issued by the Missouri Secretary of State. LF at 77. (2) TYBE alleged that Appellant purportedly violated statutory procedure by failing to give TYBE meaningful notice of its statutory right of redemption expressly codified in § 140.340, RSMo, and/or that Appellant purportedly violated statutory procedure by not notifying TYBE of its statutory right of redemption at a meaningful time. LF at 77. (3) TYBE alleged that either the St. Louis County Clerk, Collector of Revenue and/or Appellant purportedly violated the contested case procedures of the Missouri Administrative Procedure Act by failing to give notice to TYBE in accordance with §§ 536.063 and 536.067, RSMo. LF at 78. (4) TYBE alleged that: “An ex parte proceeding in which Defendant is not adequately compensated for her property would violate her rights protected by the Fifth and Fourteenth Amendments to the US Constitution.” LF at 78. TYBE filed no counterclaims in this action.

On January 23, 2009, the Court entered the following Order: “Plaintiff’s motion to sever quiet title claim from damages & ejectment claims hereby granted.” LF at 80.

On February 2, 2009, Appellant filed its Avoidance of Affirmative Defenses Stated in the Amended Answer of TYBE. LF at 81-93. In part, said Avoidance alleges that: (1) Appellant is a Delaware limited liability company and that its actions in acquiring the tax liens against Parcel I and foreclosing them were not transacting business in Missouri under relevant law. LF at 84-87. (2) The one-year period in § 140.340, RSMo, is a minimum one-year period, not a fixed redemption period that expires at the end of one year, and that the

allegations in the affirmative defense stated in paragraph B of the Amended Answer fail to clearly and precisely assert additional facts which serve to defend TYBE from Appellant's claims. LF at 87-88. (3) Neither Appellant, nor the St. Louis County Collector or the St. Louis County Clerk is authorized by law to make rules or adjudicate contested cases under the Jones-Munger Act, Chapter 140, RSMo. LF at 90. The Jones-Munger Act does not require a determination of rights or require hearings, or constitute proceedings that are contested cases under the Administrative Procedure Act, Chapter 536, RSMo. LF at 90. The allegations in the affirmative defense stated in paragraph D of the Amended Answer fails to clearly and precisely assert additional facts which serve to defend TYBE from Appellant's claims. LF at 90. (4) TYBE obtained actual notice of its right to redeem the subject property from the tax sale at a time before the right of redemption expired. LF at 91. Section 140.405, RSMo, as applied in this case does not violate the Due Process Clauses of the federal and state constitutions. LF at 91. The allegations in the affirmative defense stated in paragraph E of the Amended Answer fail to clearly and precisely assert additional facts which serve to defend TYBE from Appellant's claims. LF at 91-92.

On February 2, 2009, Appellant filed its Conditional Supplemental Counterclaim for Equitable Recoupment Directed Against TYBE and Regions Bank. LF at 94-100.

Appellant and TYBE filed cross motions for partial summary judgment concerning Parcel I. LF at 101-343. Respondents did not deny any of the facts in Appellant's motion for partial summary judgment and such facts were deemed admitted. LF at 344. The Court did

not consider TYBE's motion for partial summary judgment for non-compliance with Rule 74.04. LF at 344. The Court denied Appellant's motion for partial summary judgment. LF at 345.

On February 14, 2011, Appellant filed its Second Request. LF at 422-451. At the trial on February 14, 2011, only Count I of Appellant's Petition was tried. LF at 346-409; Order dated January 1, 2011, LF at 410; Tr. at 2. At trial, TYBE withdrew its affirmative defense based upon a purported failure to follow the procedures of the Missouri Administrative Procedure Act, Chapter 536, RSMo. Tr. at 95-98.

On March 17, 2011, Appellant formally dismissed the Metropolitan St. Louis Sewer District as a defendant. LF at 536-540. On March 28, 2011, Appellant filed proposed findings of fact and conclusions of law. LF at 541-624.

On April 11, 2011, the trial court entered judgment by denying Appellant relief under Count I of Appellant's Petition. LF at 625-633.

On May 12, 2011, Appellant filed its Notice of Appeal. LF at 722-741.

POINTS RELIED ON

I.

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT'S PETITION ON THE GROUND THAT APPELLANT'S NOTICE LETTERS WERE MAILED ON AUGUST 27, 2007 AFTER A PURPORTED ONE-YEAR REDEMPTION PERIOD PURPORTEDLY EXPIRED ON AUGUST 26, 2007, AND WERE PURPORTEDLY DEFECTIVE AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (A) RELEVANT CASE LAW, INCLUDING, WITHOUT LIMITATION, CONSTITUTIONALLY BINDING PRECEDENT DECIDED BY THIS COURT HAS HELD THAT THE TIME PERIOD SPECIFIED IN WHAT IS NOW CODIFIED IN SUBSECTION 1 OF SECTION 140.340, RSMO, GRANTS DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES A TIME PERIOD WHEN THEY HAVE AN ABSOLUTE RIGHT OF REDEMPTION (WHICH IS CURRENTLY ONE YEAR FROM THE TAX SALE), AND THAT THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES CONTINUE TO HAVE THE RIGHT TO REDEEM THEIR INTEREST FROM THE TAX SALE AFTER THAT ABSOLUTE PERIOD UNTIL THE TAX SALE PURCHASER IS EITHER AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED TO THE PROPERTY OR THE TAX SALE CERTIFICATE EXPIRES AT THE TIME SPECIFIED IN WHAT IS NOW CODIFIED IN SECTION

140.410, RSMO (WHICH IS CURRENTLY TWO YEARS FROM THE TAX SALE), AND (B) ANY PURPORTED DEFECTS IN NOTICING WERE NOT A GROUND TO INVALIDATE THE COLLECTOR'S DEED UNDER SECTION 140.520, RSMO.

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942);

United Asset Mgmt. Trust Co. v. Clark, 332 S.W.3d 159 (Mo. App., W.D. 2010); and

Boston v. Williamson, 807 S.W.2d 216 (Mo. App., W.D. 1991).

II.

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT'S PETITION ON THE GROUND THAT APPELLANT'S NOTICE LETTERS DID NOT INFORM RESPONDENTS HOW LONG THEY HAD TO EXERCISE THEIR RIGHT TO REDEEM OR BE FOREVER BARRED FROM DOING SO, AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (A) SECTION 140.405, RSMO, WAS DRAFTED TO INTEGRATE WITH RELEVANT CASE LAW ESTABLISHING THE *HOBSON* REDEMPTION PERIOD; (B) THERE IS NO UNIVERSALLY APPLICABLE REDEMPTION PERIOD ALLOWING TAX SALE PURCHASERS TO PROVIDE ADVANCE NOTICE OF THE EXPIRATION OF THE REDEMPTION RIGHTS OF DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES, AS VARIOUS STATUTES PROVIDE FOR SPECIAL RIGHTS OF REDEMPTION THAT VARY FROM THE *HOBSON* REDEMPTION PERIOD DEPENDING UPON FACTS AND

CIRCUMSTANCES THAT THE TAX SALE PURCHASER CANNOT KNOW OR WOULD KNOW ONLY WITH GREAT DIFFICULTY AT THE TIME THE SECTION 140.405 NOTICE IS SENT; (C) TAX SALE PURCHASERS CANNOT GIVE ADVANCE NOTICE OF THE TIME WHEN THEY MAY BE AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED, AS THE DATE, IF ANY, WHEN ALL LAWFUL REQUIREMENTS HAVE BEEN SATISFIED AUTHORIZING THE TAX SALE PURCHASER TO ACQUIRE A COLLECTOR'S DEED CANNOT BE KNOWN IN ADVANCE; (D) NEITHER SECTION 140.405, RSMO, NOR CONSTITUTIONAL PRINCIPLES OF DUE PROCESS REQUIRE A TAX SALE PURCHASER TO PROVIDE ADVANCE NOTICE OF THE TIME LIMITS APPLICABLE FOR REDEMPTION, THE SPECIFIC PROCEDURES THAT MUST BE FOLLOWED, OR ANY OTHER DETAILS ATTACHING TO THE RIGHT OF REDEMPTION FROM THE TAX SALE; (E) ANY PURPORTED DEFECTS IN NOTICING WERE NOT A GROUND TO INVALIDATE THE COLLECTOR'S DEED UNDER SECTION 140.520, RSMO; AND (F) THE NOTICE LETTERS MAILED AUGUST 27, 2007, INFORMED THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES OF THEIR RIGHT TO REDEEM, WHICH IS ALL THAT IS REQUIRED BY SECTION 140.405, RSMO.

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942);

United Asset Mgmt. Trust Co. v. Clark, 332 S.W.3d 159 (Mo. App., W.D. 2010); and

Boston v. Williamson, 807 S.W.2d 216 (Mo. App., W.D. 1991).

III.

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT'S PETITION WITHOUT MAKING MATERIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY APPELLANT, BECAUSE SUCH FINDINGS AND CONCLUSIONS ARE REQUIRED BY RULE 73.01 AND SUCH LACK OF FINDINGS OF FACT AND CONCLUSIONS OF LAW MATERIALLY AFFECTS THE MERITS OF THE ACTION AND/OR INTERFERES WITH APPELLATE REVIEW.

(1) Rule 73.01;

(2) Rule 78.07(c); and

(3) *Dorman v. Dorman*, 91 S.W.3d 167 (Mo. App., W.D. 2002).

ARGUMENT

I.

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT'S PETITION ON THE GROUND THAT APPELLANT'S NOTICE LETTERS WERE MAILED ON AUGUST 27, 2007 AFTER A PURPORTED ONE-YEAR REDEMPTION PERIOD PURPORTEDLY EXPIRED ON AUGUST 26, 2007, AND WERE PURPORTEDLY DEFECTIVE AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (A) RELEVANT CASE LAW, INCLUDING, WITHOUT LIMITATION, CONSTITUTIONALLY BINDING PRECEDENT DECIDED BY THIS COURT HAS HELD THAT THE TIME PERIOD SPECIFIED IN WHAT IS NOW CODIFIED IN SUBSECTION 1 OF SECTION 140.340, RSMO, GRANTS DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES A TIME PERIOD WHEN THEY HAVE AN ABSOLUTE RIGHT OF REDEMPTION (WHICH IS CURRENTLY ONE YEAR FROM THE TAX SALE), AND THAT THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES CONTINUE TO HAVE THE RIGHT TO REDEEM THEIR INTEREST FROM THE TAX SALE AFTER THAT ABSOLUTE PERIOD UNTIL THE TAX SALE PURCHASER IS EITHER AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED TO THE PROPERTY OR THE TAX SALE CERTIFICATE EXPIRES AT THE TIME SPECIFIED IN WHAT IS NOW CODIFIED IN SECTION

140.410, RSMO (WHICH IS CURRENTLY TWO YEARS FROM THE TAX SALE), AND (B) ANY PURPORTED DEFECTS IN NOTICING WERE NOT A GROUND TO INVALIDATE THE COLLECTOR'S DEED UNDER SECTION 140.520, RSMO.

STANDARD OF JUDICIAL REVIEW

In a judge-trying case, the appellate court will affirm the trial court's judgment unless no substantial evidence supports it, it is against the weight of the evidence, or it erroneously applies the law. Rule 84.13(d); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 163 (Mo. App., W.D. 2010). The review related to questions of law, however, is *de novo*, and no deference is afforded to the trial court's legal conclusions. *Amond v. Ron York & Sons Towing*, 302 S.W.3d 708, 711 (Mo. App. E.D. 2009).

HISTORICAL CONSTRUCTION OF RELEVANT STATUTES BY THIS COURT

AND CASES FOLLOWING THIS COURT'S DECISIONS

In part, the trial court invalidated the Collector's Deed to Appellant based upon the statutory construction of certain provisions of the Jones-Munger Act, Chapter 140, RSMo, particularly §§ 140.405 and 140.340, RSMo.

"Appellate courts interpret statutes in such a manner as to 'give effect to legislative intent as reflected in the plain language of the statute.'" *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159 (Mo. App., W.D. 2010) (quoting *Keylien Corp. v. Johnson*, 284 S.W.3d 606, 609 (Mo. App. E.D. 2009)). Statutes that are seemingly in conflict are not read in isolation but should be harmonized, if possible, so that they stand together. *Keylien*

Corporation v. Johnson, 284 S.W.3d 606, 609-610 (Mo. App., E.D. 2009); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 167 (Mo. App., W.D. 2010). In ascertaining legislative purpose, it is appropriate to consider the legislative history of the statutes being construed. *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 167 (Mo. App., W.D. 2010).

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) construed some of the original provisions of the Jones-Munger Act, Chapter 140, RSMo, enacted in 1933 that are now codified in §§ 140.340, 140.360, 140.410, and 140.420, RSMo. Under the original enactment of the Jones-Munger Act, the annual delinquent tax auctions occurred in November of each year instead of August of each year under § 140.150.1, RSMo. In November 1936, two parcels were offered by the county collector for a third time for delinquent taxes. *Hobson*, 163 S.W.2d at 1021. Elmer purchased the tax interests in these two parcels at the third sale and was issued tax sale certificates of purchase. *Hobson*, 163 S.W.2d at 1021. “As the Jones-Munger Act was originally enacted in 1933, the owner or occupant of any property sold for taxes--whether at a first, second or third offering--had a two-year right to redeem their interest in the property. 1933 Mo. Laws 432-33. However, in 1939 the statute was amended to eliminate the two-year redemption period for property sold at a third offering tax sale. 1939 Mo. Laws 851-52.” *M & P Enterprises, Inc. v. Transamerica Financial Services*, 944 S.W.2d 154, 157 (Mo. Banc 1997).⁵

⁵ For information on redemption procedures, if any, applicable to third sales, see *State ex rel.*

On November 1, 1940, Hobson, by his guardian, paid redemption funds and was issued certificates of redemption for the two parcels by the county collector. *Hobson*, 163 S.W.2d at 1021. Although the facts were disputed, this Court held that Elmer “was prevented from receiving his deed by the acts of the collector and that he had done everything in his power to comply with the statutory requirements before the attempted redemption was made.” *Hobson*, 163 S.W.2d at 1024. Elmer’s attempts to obtain a collector’s deed occurred more than two years after the tax sale in 1936; there was testimony from the collector that these attempts occurred in October 1940; Elmer testified that the collector informed him that the time for securing a collector’s deed had already passed. *Hobson*, 163 S.W.2d at 1024.

At the time *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) was decided, the time period in what is now codified in subsection 1 of § 140.340, RSMo, was two years from the date of the tax sale, and the time period in what is now codified in §

McGhee v. Baumann, 349 Mo. 234, 160 S.W.2d 697, 700 (Mo. Banc 1942); *Journey v. Miler*, 363 Mo. 163, 250 S.W.2d 164, 165-166 (Mo. Banc 1952); *M & P Enterprises, Inc. v. Transamerica Financial Services*, 944 S.W.2d 154, 157 (Mo. Banc 1997); *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 612-13 (Mo. App., E.D. 2009); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 166 (Mo. App., W.D. 2010); *see also* §§ 140.250 and 140.405, RSMo, as amended by Senate Committee Substitute for House Committee Substitute for House Bill No. 1316, Second Regular Session, 95th General Assembly (hereinafter sometimes referred to as “HB 1316”), effective August 28, 2010.

140.410, RSMo (the date of the expiration of the tax sale certificate), was four years from the date of the tax sale. House Committee Substitute for Senate Committee Substitute for Senate Bill No. 295, First Regular Session, 92nd General Assembly (hereinafter sometimes referred to as “SB 295”), enacted in 2003 changed the two-year time periods in subsections 1 and 4 of § 140.340, RSMo, subsection 2 of § 140.360, RSMo, and § 140.420, RSMo, to one year, and SB 295 changed the four-year time period in § 140.410, RSMo, to two years.⁶

6 Counsel for Appellant is aware of five amendatory enactments affecting the provisions of §§ 140.310, 140.340, 140.360, 140.410, or 140.420, RSMo, since their original enactment in 1933. First, the 1939 amendments to the Jones-Munger Act changed the procedures applicable to third sales, among other things. Second, the referenced 2003 amendments enacted by SB 295 changed certain time periods. Third, House Committee Substitute for Senate Bill No. 1012, Second Regular Session, 92nd General Assembly, enacted in 2004 amended § 140.340, RSMo, to eliminate the payment of interest on surplus funds paid for tax sale certificates. Fourth, Senate Committee Substitute for House Committee Substitute for House Bill No. 1316, Second Regular Session, 95th General Assembly (“HB 1316”), enacted in 2010 changes §§ 140.310, 140.340 and 140.420, RSMo, effective August 28, 2010. Fifth, Conference Committee Substitute for House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 117, First Regular Session, 96th General Assembly, enacted in 2011 made changes to § 140.410, RSMo.

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) considered the issue of whether an owner of property sold for taxes may redeem more than two years subsequent to the sale date (the time period then specified in what is currently codified in subsection 1 of § 140.340, RSMo) but prior to the expiration of the tax sale certificate four years after the sale (the time period then specified in what is currently codified in § 140.410, RSMo). *Hobson*, 163 S.W.2d at 1022.

The *Hobson* court found the following conflicts or inconsistencies in determining the duration of redemption rights under the original enactment of the Jones-Munger Act, Chapter 140, RSMo:

Subsection 1 of § 11145, RSMo 1939, cited in *Hobson*, 163 S.W.2d at 1022-23, and now codified in subsection 1 of § 140.340, RSMo, state in relevant part: “The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the ... [two years or one year, respectively] next ensuing, in the following manner ...”

Subsection 4 of § 11145, RSMo 1939, cited in *Hobson*, 163 S.W.2d at 1022-23, and now codified in subsection 4 of § 140.340, RSMo, provide in relevant part: “In case the party purchasing said land, his heirs or assigns fails to take a tax deed for the land so purchased within six months after the expiration of the ... [two years or one year, respectively] next following the date of sale, no interest shall be charged or collected from the redemptioner after that time.”

Section 11147, RSMo, cited in *Hobson*, 163 S.W.2d at 1022-23, and now codified in § 140.360, RSMo, require the redeemer to pay to the tax sale purchaser the value of certain improvements made to the real estate sold at tax sale, but provide in subsection 2 thereof: “No compensation shall be allowed for improvements made before the expiration of ... [two years or one year, respectively] from the date of sale for taxes.”

Hobson v. Elmer, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) indicates that if the right of redemption absolutely ceases at the end of the period now specified in subsection 1 of § 140.340, RSMo, there would be no purpose in a provision that the redemptioner could not be charged interest after the end of that period, and it would be unnecessary to state that the redemptioner was not required to make compensation for improvements placed on the land before the expiration of that period, and impliedly that he was required to make such compensation after the end of that period, if the redemptioner could not redeem at all after the end of that period. *Hobson*, 163 S.W.2d at 1023.

Hobson also noted that § 11149, RSMo 1939, now codified in § 140.420, RSMo, provide in part: “If no person shall redeem the lands sold for taxes within ... [two years or one year, respectively] from the date of the sale, at the expiration thereof, and on production of the certificate of purchase, the collector of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a

conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple ...” *Hobson*, 163 S.W.2d at 1023.7

The Court in *Hobson* stated:

There is one manner and, in our opinion, only one manner in which these seemingly conflicting provisions may be harmonized. We construe them to mean that the owner of the lands has an absolute power of redemption which cannot be defeated by the purchaser during and up to the end of the two-year period. Thereafter the purchaser has a right to obtain a collector's deed at any time within the next two years by complying with the various statutory provisions, to-wit: by producing to the collector his certificate of purchase, paying the

7 Additional statutory support for conflict in these statutes can be seen in § 140.410, RSMo, previously codified in § 11148, RSMo 1939, which establishes the date of the expiration of tax sale certificate, which was four years prior to the enactment of SB 295 in 2003 and is now two years, and § 140.310, RSMo, previously codified in § 11135, RSMo, which establishes the date the tax sale purchaser is authorized to take possession of non-homestead property prior to the issuance of a collector’s deed, which was two years after the tax sale prior to the enactment of SB 295 in 2003 and is now one year after the tax sale. *But see Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 468-469 (Mo. App., E.D. 2009).

subsequently accrued taxes and legal fees and demanding his deed. If, after the end of the two-year period and before the purchaser has complied with these conditions precedent to obtaining his deed, the owner or transferee applies for a redemption and makes the required payments he thereby destroys the power of the purchaser to obtain a deed.

Hobson, 163 S.W.2d at 1023. The foregoing holding is sometimes referred to in this Brief as the “*Hobson* Redemption Period”, whether or not the 2003 time period changes made in SB 295 are applicable.

Section 1.120, RSMo, provides: “The provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of a prior law, shall be construed as a continuation of such law and not as a new enactment.” The general rule is that when an amendment is made to part of a legislative act, the provisions retained are considered to be a continuation of the former law. *Atchison v. Retirement Board of Police Retirement System of Kansas City*, 343 S.W.2d 25, 33-34 (Mo. 1961); *Jackman v. Century Brick Corporation of America*, 412 S.W.2d 111, 115-116 (Mo. 1967); *Sell v. Ozarks Medical Center*, 333 S.W.3d 498, 508 (Mo. App., S.D. 2011). In this case, the only relevant amendments to or repeals and reenactments of what is now codified in §§ 140.310, 140.340, 140.360, 140.410, and 140.420, RSMo, since 1933 were the changes made by SB 295 in 2003 in certain time periods and the 1939 amendments to the Jones-Munger Act providing

that purchasers at third offering delinquent tax sales are not entitled to receive a tax sale certificate of purchase but instead directly receive a collector's deed, among other things. The other substantive parts of §§ 140.310, 140.340, 140.360, 140.410, and 140.420, RSMo, generally applicable to facts occurring prior to August 28, 2010⁸, have not been changed since their original enactment in 1933 as construed in *Hobson*, 163 S.W.2d at 1023, except for the 2003 and 1939 amendments referred to herein. Based on § 1.120, RSMo, the *Hobson* Redemption Period should still be good law, except the time periods stated in *Hobson* were changed by the enactment of SB 295 in 2003 and *Hobson* no longer applies to third offering delinquent tax sales after the 1939 amendments to the Jones-Munger Act, Chapter 140, RSMo.

The *Hobson* Redemption Period has been followed or recognized in the following cases: *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949); *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970); *Boston v. Williamson*, 807 S.W.2d 216, 217 n.3 (Mo. App., W.D. 1991)

⁸ Senate Committee Substitute for House Committee Substitute for House Bill No. 1316, Second Regular Session, 95th General Assembly (hereinafter sometimes referred to as "HB 1316") became effective on August 28, 2010.

(discussing the integration of the *Hobson* Redemption Period and § 140.405, RSMo); *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992) (concluding the parties entitled to notice under § 140.405, RSMo, to “include anyone who has not received prior notice of the sale, but who has *an interest that could be lost when the collector's deed is issued.*”) (emphasis added); *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996) (“Until the execution of a tax deed, defendant and all other parties in interest, including plaintiffs, have the right to redeem the property by paying the delinquent taxes.”); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 (Mo. App., W.D. 2010); *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App., W.D. 2011); and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010). The Missouri Court of Appeals, Western District, recognized the *Hobson* Redemption Period in its opinion in *Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court), Slip Op. at 6.

The opinions of the Missouri Court of Appeals, Eastern District in *Ndegwa v. KSSO, LLC*, Appeal No. ED96315 (Mo. App., E.D. October 11, 2011) and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012) find Appellant’s reliance on *Hobson* misplaced. *Ndegwa*, Slip Op. at 25, footnote 6; *Sneil*, Slip Op. at 11. The purported reasons for not following *Hobson* and the cases following *Hobson* are: (1) *Hobson* involved a third sale; (2) the statutes relevant to the duration of the right of

redemption have been amended “several” (as described in *Ndegwa*) or “multiple” (as described in *Sneil*) times; and (3) *Hobson* was not a notice case, as § 140.405, RSMo, was enacted more than forty years after *Hobson*. *Ndegwa*, Slip Op. at 25, footnote 6; *Sneil*, Slip Op. at 11.

The original 1933 enactment of the Jones-Munger Act gave rights of redemption to owners of properties sold at third offering delinquent tax sales that were the same as those granted owners of properties sold at first or second offering delinquent tax sales.

Neither *Ndegwa* nor *Sneil* analyze any of the cases following *Hobson* or that are consistent with *Hobson* in determining whether *Hobson* should not be followed because it involved a third offering delinquent tax sale.⁹ Prior to the 1939 there was a two-year right of

⁹ Cases following *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942) or that are consistent with that case include: *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S.W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949); *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970); *Boston v. Williamson*, 807 S.W.2d 216, 217 n.3 (Mo. App., W.D. 1991) (discussing the integration of the *Hobson* Redemption Period and § 140.405, RSMo); *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992) (concluding the parties entitled to notice under § 140.405, RSMo, to “include anyone who has not received prior notice of the sale, but who has *an interest that*

redemption from third offering sales under what is now codified in § 140.340, RSMo, *M & P Enterprises Inc. v. Transamerica Financial Services*, 944 S.W.2d 154, 158 (Mo. banc 1997), *Ndegwa*, Slip Op. at 9. After the 1939 amendments to the Jones-Munger Act, Chapter 140, RSMo, and prior to the effective date of HB 1316 on August 28, 2010, subsection 2 of § 140.250, RSMo, provided that no certificate of purchase was to be issued to third offering sale purchasers. *See, e.g. State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 164, 166 (Mo. 1944) (describing changes that occurred by reason of the 1939 amendments to the Jones-Munger Act); *Burris v. Bowers*, 181 S.W.2d 520, 521 (Mo. 1944) (quoting § 11130, RSMo 1939); *State ex rel. McGhee v. Baumann*, 349 Mo. 234, 160 S.W.2d 697, 700 (Mo. Banc 1942) (describing changes that occurred by reason of the 1939

could be lost when the collector's deed is issued.") (emphasis added); *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996) ("Until the execution of a tax deed, defendant and all other parties in interest, including plaintiffs, have the right to redeem the property by paying the delinquent taxes."); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 (Mo. App., W.D. 2010); *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App., W.D. 2011); and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010). The Missouri Court of Appeals, Western District, recognized the *Hobson* Redemption Period in its opinion in *Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court), Slip Op. at 6.

amendments to the Jones-Munger Act); *Shaw v. Armstrong*, 361 Mo. 648, 235 S.W.2d 851, 857 (Mo. 1951) (*quoting* § 11130, RSMo 1939), *overruled on specified grounds*, *Journey v. Miler*, 363 Mo. 163, 250 S.W.2d 164, 165-166 (Mo. Banc 1952); and *Journey v. Miler*, 363 Mo. 163, 250 S.W.2d 164, 165-166 (Mo. Banc 1952). *See also* § 140.250, as enacted by HB 1316.

In *Journey v. Miler*, 363 Mo. 163, 250 S.W.2d 164 (Mo. Banc 1952), this Court stated:

However, the sale in the *Bullock* case was in 1935 under the original Jones-Munger Act before it was amended in 1939. See Laws 1933, p. 425; Laws 1939, p. 850. At that time, a purchaser at a third sale acquired the same interest as purchasers at other sales; that is, he got a certificate of purchase, not a deed, and the owner had the same right of redemption as on previous sales. Sec. 9953a, Laws 1933, p. 432; *see also State ex rel. McGhee v. Baumann*, 349 Mo. 232, 160 S.W.2d 697.

250 S.W.2d at 165. Thus, for cases involving facts occurring prior to the effective date of the 1939 amendments to the Jones-Munger Act, third offering sales were not treated differently than first or second offerings, and certificates of purchase were issued to purchasers at the pre-1939 third offering sales instead of collector's deeds.

Hobson involved a third offering sale occurring in November 1936 for delinquent taxes for the years 1928 to 1935, and a certificate of purchase was issued to Hobson. *Hobson*, 163 S.W.2d at 1021

Bullock v. Peoples Bank of Holcomb, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943) involved a tax sale that occurred on November 12, 1935 for delinquent taxes for the years 1931 and 1932, and the purchaser received a certificate of purchase. *Bullock* follows *Hobson*.

State ex rel. Baumann v. Marburger, 348 Mo. 164, 182 S. W.2d 163, 164, 165-166 (Mo. 1944) involved a third offering sale for delinquent taxes that occurred on November 12, 1938 for delinquent taxes for the years 1931 to 1937, inclusive, and a certificate of purchase was issued to the purchaser. *Marburger* followed *Hobson*.

Wetmore v. Berger, 354 Mo. 166, 188 S.W.2d 949, 950, 953 (Mo. 1945) involved a sale on November 16, 1938 for delinquent taxes for the year 1931. A certificate of purchase was issued to the purchaser. *Wetmore* follows *Hobson*.

Strohm v. Boden, 359 Mo. 573, 222 S.W.2d 772, 773-774, 776 (Mo. 1949) involved a sale for a single delinquent city special assessment tax for 1937; the sale occurred on December 15, 1937; and a certificate of purchase was issued to the purchaser. Nothing in this case indicates that the 1937 special assessment had been offered for sale twice before on December 15, 1937. *Strohm* followed *Hobson*.

Powell v. City of Creve Coeur, 452 S.W.2d 258, 259, 261-262 (Mo. App., St. L. 1970) involved a sale other than a third sale, and the Missouri Court of Appeals, St. Louis District followed *Hobson* in that case.

Boston v. Williamson, 807 S.W.2d 216 (Mo. App., W.D. 1991) involved a sale on August 25, 1986, and although the case does not specifically state whether the sale was certificated, the case states that the collector's deed was issued under § 140.420, RSMo (applicable to first or second offerings) and makes no mention of § 140.250, RSMo (applicable to third offerings). Although *Boston* only mentions *Hobson* in footnote 3 thereof, *see Snel*, Slip Op. at 11, the footnote reference would tend to indicate that *Boston* followed *Hobson*.

United Asset Mgmt. Trust Co. v. Clark, 332 S.W.3d 159, 164 (Mo. App., W.D. 2010), *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App., W.D. 2011), and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010) all involved certificated sales prior to August 28, 2010 10, and all of those cases followed *Hobson*.

The fact that *Hobson* involved a third offering sale in 1936 does not make the holding in *Hobson* inapplicable to this case, because prior to the effective date of the 1939 amendments to the Jones-Munger Act, a purchaser at a third sale acquired the same interest

10 Section 140.250.2, as enacted by HB 1316, effective August 28, 2010, provides that certificates of purchase shall be issued to purchasers at third offering delinquent tax sales.

as purchasers at other sales; that is, he got a certificate of purchase, not a deed, and the owner had the same right of redemption as on previous sales. *Journey v. Miler*, 363 Mo. 163, 250 S.W.2d 164, 165 (Mo. Banc 1952).

The only statutory amendments that affect the *Hobson* analysis are the 1939 amendments making *Hobson* inapplicable to third offering delinquent tax sales and the 2003 amendments changing certain time periods. *Ndegwa* and *Sneil* indicate that there are “several” (as described in *Ndegwa*) or “multiple” (as described in *Sneil*) amendments to relevant statutes since *Hobson* was decided that somehow make *Hobson* no longer valid law. *Ndegwa*, Slip Op. at 25, footnote 6; *Sneil*, Slip Op. at 11. No statutory amendments are specifically identified in *Ndegwa* or *Sneil*. As indicated elsewhere in this Brief, the only relevant amendments of the statutes in effect at the time of the events of this case that differ from the statutes interpreted in *Hobson* are the 2003 amendments that change certain time periods but do not change the other operative language of the relevant statutes interpreted in *Hobson* and the 1939 amendments that make *Hobson* inapplicable to third offering delinquent tax sales. Under § 1.120, RSMo, and the common law rule that when an amendment is made to part of a legislative act, the provisions retained are considered to be a continuation of the former law, *Atchison v. Retirement Board of Police Retirement System of Kansas City*, 343 S.W.2d 25, 33-34 (Mo. 1961), *Jackman v. Century Brick Corporation of America*, 412 S.W.2d 111, 115-116 (Mo. 1967), *Sell v. Ozarks Medical Center*, 333 S.W.3d 498, 508 (Mo. App., S.D. 2011), those parts of §§ 140.310, 140.340, 140.360, 140.410, and

140.420, RSMo, that have not been changed since *Hobson* was handed down should be interpreted as they were in *Hobson*, except for the time period changes made by SB 295 in 2003 and the changes to third offering procedures enacted by the 1939 amendments to the Jones-Munger Act, Chapter 140, RSMo.

Even though *Hobson* predates § 140.405, RSMo, by about 40 years, § 140.405, RSMo, was drafted to integrate with the *Hobson* Redemption Period. Section 140.405, RSMo,¹¹ provides, in part:

At least ninety days prior **to the date when a purchaser is authorized to acquire the deed**, the purchaser shall notify any person who holds a publicly recorded deed of trust, mortgage, lease, lien or claim upon that real estate of the latter person's right to redeem such person's publicly recorded security or claim.

(Emphasis added.) The emphasized language referring to the date when a purchaser is authorized to acquire the deed was included in the original enactment of § 140.405, RSMo, in

¹¹ Section 140.405, RSMo, was amended by Senate Committee Substitute for House Committee Substitute for House Bill No. 1316, Second Regular Session, 95th General Assembly ("HB 1316"), effective August 28, 2010. The quoted language of § 140.405, RSMo, emphasized herein was not changed by HB 1316.

1984. *M & P Enterprises Inc. v. Transamerica Financial Services*, 944 S.W.2d 154, 158 (Mo. banc 1997).

The legislature is presumed to have acted with knowledge of the existing law. *Sell v. Ozarks Medical Center*, 333 S.W.3d 498, 508 (Mo. App., S.D. 2011). The phrase “authorized to acquire the deed” in § 140.405, RSMo, should be presumed to be a direct reference to the *Hobson* case (which was the existing law prior to the 1984 enactment of § 140.405, RSMo). Stated simplistically, *Hobson* held that the right of redemption expires when the tax sale purchaser is authorized to acquire the collector’s deed, so long as the tax sale certificate has not expired. *Hobson*, 163 S.W.2d at 1023; *Boston v. Williamson*, 807 S.W.2d 216, 217-218 (Mo. App., W.D. 1991). The “authorized to acquire the deed” language in § 140.405, RSMo, recognizes *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942) and cannot be read to legislatively abrogate *Hobson*.

The foregoing establishes that the “date when a purchaser is authorized to acquire the deed” under § 140.405, RSMo, is not one year from the tax sale under subsection 1 of §140.340, RSMo, and there was no fixed, maximum one-year redemption period after the first offering delinquent tax sale of occurring on August 28, 2006 in this case.

POINT I(A):

THE HOBSON REDEMPTION PERIOD CONFLICTS WITH THE 2009

EASTERN DISTRICT OPINIONS

The Missouri Court of Appeals, Eastern District, has opined that § 140.405, RSMo, requires that notices of the right of redemption from a first or second offering delinquent tax sale conducted under the Jones-Munger Act, Chapter 140, RSMo, must give notice of a purported one-year right of redemption purportedly created by subsection 1 of § 140.340, RSMo. *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009). *See also Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273 (Mo. App., E.D. 2006) and *Glasgow Enterprises, Inc. v. Brooks*, 234 S.W. 3d 407 (Mo App E.D. 2007).¹²

¹² The Missouri Court of Appeals, Southern District, has opined that § 140.405, RSMo, requires that notices of the right of redemption from first or second offering delinquent tax sales conducted under the Jones-Munger Act, Chapter 140, RSMo, “must inform persons of the time frame in which they must act to redeem their property or be forever barred from doing so.” *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 (Mo. App., S. D. 2010); *Crossland v. Thompson*, 317 S.W.3d 635, 643-644 (Mo. App., S.D. 2010). The Missouri Court of Appeals, Southern District cases do not decide the

The 2009 Eastern District Opinions¹³ are patently and irreconcilably inconsistent with *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949), *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970), *Boston v. Williamson*, 807 S.W.2d 216, 217-218 & n.3 (Mo. App., W.D. 1991), *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992), *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996), *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 (Mo. App., W.D. 2010), *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App., W.D. 2011), and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010), as the right of redemption from a first or second offering delinquent tax sale under the Jones-Munger Act, Chapter 140, RSMo, is not a fixed, maximum one-year period under subsection 1 of § 140.340, RSMo, but is the “*Hobson* Redemption Period” under the applicable “time frame”. See *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 & n.2 (Mo. App., S. D. 2010).

¹³ *Keylien Corporation v. Johnson*, 284 S.W.3d 606 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235 (Mo. App., E.D. 2009).

applicable and binding precedent of this Court. *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 & 171 n.9 (Mo. App., W.D. 2010) (“[T]he purchaser must obtain the collectors deed and record it during the one year period beginning one year after the date of sale”).

The 2009 Eastern District Opinions¹⁴ holding that there is a maximum, fixed one-year redemption period under subsection 1 of § 140.340, RSMo, fail to mention, consider or discuss the relevant opinions of this Court¹⁵ that are purportedly binding precedent on the Missouri Court of Appeals, Eastern District, under Mo. Const. art. V, § 2; *Doe v. Roman Catholic Archdiocese of St. Louis*, 311 S.W.3d 818, 822-823 (Mo. App., E.D. 2010). The 2009 Eastern District Opinions fail to mention, consider or discuss prior precedent on the duration of the right of redemption after first or second offering delinquent tax sales issued

¹⁴ *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009).

¹⁵ *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), and *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949).

by the Missouri Court of Appeals, St. Louis District, in *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970).¹⁶

Boston v. Williamson, 807 S.W.2d 216, 217-218 (Mo. App., W.D. 1991) and the opinion in *Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court upon transfer), Slip Op. at 4-6, correctly integrate the *Hobson* Redemption Period with § 140.405, RSMo, by establishing the deadline for mailing tax sale redemption notices under § 140.405, RSMo, as being at least 90 days prior to the time when the tax sale purchaser is authorized to acquire the collector's deed. That part of *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009) and the opinions in *Ndegwa v. KSSO, LLC*, Appeal No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 22, and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012), Slip Op. at 11, holding that the deadline for mailing tax sale redemption notices under § 140.405, RSMo, as being at least 90 days prior to the expiration of the time period set forth in subsection 1 of § 140.405, RSMo, are inconsistent with prior case law, *Boston v. Williamson*, 807 S.W.2d 216, 217-218 (Mo. App., W.D. 1991), and are dependent

¹⁶ The opinions in *Ndegwa v. KSSO, LLC*, Appeal No. ED96315 (Mo. App., E.D. October 11, 2011) and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012) have been transferred to this Court and have no legal effect. Mo. Const. art. V, § 10. *Ndegwa* and *Sneil* only mention or analyze *Hobson* and do not mention or analyze any of the cases following *Hobson*.

upon the incorrect conclusion that subsection 1 of § 140.340, RSMo, establishes a fixed, mandatory, maximum redemption period made in *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009) and followed in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009). *See also United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 172 n.10 (Mo. App., W.D. 2010), and *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 n.2 (Mo. App., S.D. 2010).

There is simply no legal basis for the conclusion stated *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009) and repeated in *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009) that subsection 1 of § 140.340, RSMo, creates a maximum, fixed one-year redemption period from first or second offering delinquent tax sales under the Jones-Munger Act, Chapter 140, RSMo.

APPLICATION OF THE HOBSON-TYPE ANALYSIS TO THE FACTS

The trial court found that on August 28, 2006, the St. Louis County Collector offered Parcel I for sale as a first offering under the Jones-Munger Act. LF at 626.

The trial court found that on August 27, 2007, Appellant sent a notice to TYBE and Regions Bank via certified mail, returned receipt requested, a true and correct copy of which is included within Plaintiff's Parcel I Trial Exhibit No. 8. LF at 627.

The trial court found that on August 28, 2007, both TYBE and Regions Bank received the notice via certified mail. LF at 627. The trial court found that Appellant made no attempt to contact either TYBE or Regions Bank at any time prior to August 27, 2007. LF at 627.

The trial court found that on December 6, 2007, Appellant acquired a Collector's Deed from the St. Louis County Collector, which was recorded on December 18, 2007 in Book 17747 Page 397 of the St. Louis County Records. LF at 630. The trial court found that TYBE and Regions Bank did not redeem their interests in Parcel I prior to the issuance of the Collector's Deed. LF at 630.

The redemption period did not expire in this case on August 26, 2007, as found by the trial court. LF at 632. The redemption period expired on December 6, 2007, the date the Collector's Deed was issued or authorized to be issued in this case. LF at 630.

The trial court erred in invalidating the Collector's Deed on the ground that the § 140.405 Notice Letters were not sent at least 90 days before August 26, 2007. LF at 632.

POINT I (B):

**SECTION 140.520, RSMO, PROHIBITS INVALIDATION OF THE
COLLECTOR'S DEED FOR THE REASONS STATED IN THE TRIAL
COURT'S JUDGMENT**

Under the facts of this case, the purported defects in the tax lien foreclosure process used by Appellant and complained of by Respondents are mere irregularities or failures of

timely performance that are not a basis for invalidation of the Collector's Deed under § 140.520, RSMo.

EVIDENTIARY EFFECT OF COLLECTOR'S DEEDS

Section 140.420, RSMo, provides that collector's deeds issued under the provisions of the Jones-Munger Law, Chapter 140, RSMo, "shall vest in the grantee an absolute estate in fee simple, subject, however, to [certain encumbrances not relevant here]". *But see Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 468 (Mo. App., E.D. 2009) (finding that a delinquent tax payer was still the owner of record after the issuance and recordation of a collector's deed to a tax sale purchaser).

Section 140.460, RSMo, provides that collector's deeds:

shall be prima facie evidence that the property conveyed was subject to taxation at the time assessed, that the taxes were delinquent and unpaid at the time of sale, **of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings**, that said land or lot had not been redeemed and that the period therefore had elapsed, and prima facie evidence of a good and valid title in fee simple in the grantee of said deed.

(Emphasis added.)

Mitchell v. Atherton, 563 S.W.3d 13, 17-18 (Mo. Banc 1978) and *Stadium West Properties v. Johnson*, 133 S.W.3d 128, 136 (Mo. App., W.D. 2004) have interpreted § 140.460, RSMo, to mean that a collector's deed is *prima facie* evidence of the regularity of notice in compliance with the law, because notice and sale would be "prior proceedings" under § 140.460, RSMo. Relevant case law places the burden upon those who wish to overcome the *prima facie* evidence of regularity and validity presented by a collector's deed to offer evidence at variance with the presumptive fee simple absolute title conveyed by the Collector's Deed to Appellant. *Stadium West Properties v. Johnson*, 133 S.W.3d 128, 136 (Mo. App., W.D. 2004).¹⁷

¹⁷ An action to set aside a deed is an extraordinary proceeding in equity requiring evidence to support the cancellation of the deed that is clear, cogent and convincing. *See, e.g., Jolly v. Clarkson*, 157 S.W.3d 290, 292 (Mo. App., S.D. 2005); *Robertson v. Robertson*, 15 S.W.3d 407, 411 (Mo. App., S.D. 2000); *Thurmon v. Ludy*, 914 S.W.2d 32, 34 (Mo. App., E.D. 1996); *Estate of Oden v. Oden*, 905 S.W.2d 914, 918-919 (Mo. App., E.D. 1995) ("An action to set aside a deed is a matter of equitable cognizance. Myriad cases hold that relief will be granted only on the basis of "clear and convincing" evidence."); and *Queathem v. Queathem*, 712 S.W.2d 703, 706 (Mo. App., E.D. 1986). The foregoing cases state the common law and do not directly address the burden of proof needed to set aside a foreclosure deed protected by statutory presumptions of validity under §§ 140.460 or 443.380, RSMo. If "clear, cogent and convincing" evidence is needed to set aside an ordinary deed, then no lesser burden of

Section 140.520, RSMo, provides, in part:

No ... mere irregularity of any kind in any of the proceedings, shall invalidate any such proceeding, or the title conveyed by the tax deed; nor shall any failure of any officer or officers to perform the duties assigned him or them, on the day or within the time specified, work any invalidation of any such proceedings, or of such deed, Acts of officers de facto shall be as valid as if they were officers de jure,

(Emphasis added.) *State ex rel. Howard v. Timbrook's Estate*, 240, Mo. 226, 144 S.W. 843, 846-847 (1912), construed § 11521, RSMo 1909, a predecessor of § 140.520, RSMo, as repealing the common law rule of strict construction of tax sale statutes and replacing that common law rule with a more liberal statutory rule of construction whereby technical objections, or “mere irregularities”, are insufficient to invalidate tax sale proceedings. In *Timbrook's Estate*, this Court upheld a tax sale despite the fact that the assessor failed to verify the assessment book by affidavit; the omission of the assessor's affidavit was not a basis to invalidate the tax under § 11521, RSMo 1909. *Timbrook's Estate*, 144 S.W. 846-

proof should apply to this Collector's Deed. Respondents-Defendants should have the burden of producing evidence that is clear, cogent and convincing in order to support the cancellation of the Collector's Deed to Appellant.

847.18

In *Phelps v. Brumback*, 107 Mo. App. 16, 80 S.W. 678, 679 (K.C. 1903), the Court stated: “If the state had a valid claim for taxes, the purchaser at the tax sale became subrogated to all the rights thereto, which is not subject to be defeated by mere irregularities.” (Emphasis added.) In *Phelps*, the Court found that the failure to assess three

18 Appellant’s research has not found any modern cases citing § 140.520, RSMo. Courts have ignored or overlooked § 140.520, RSMo. See, e.g. *Stadium West Properties LLC v. Johnson*, 133 S.W.3d 128, 134-135 (Mo. App., W.D. 2004). *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012), Slip Op. at 12-13, makes reference to Appellant’s argument that the purported defects in the Notice Letters are “mere irregularities”, but the opinion in *Sneil* makes no reference to § 140.520, RSMo, nor does *Sneil* provide any analysis of § 140.520, RSMo. Section 140.520, RSMo, appears to be a legislative command to the judiciary that the invalidation of tax sale proceedings and tax deeds is not to be based on mere irregularities or mere technical objections. See *State ex rel. Howard v. Timbrook’s Estate*, 240, Mo. 226, 144 S.W. 843, 846 (1912). Strict construction of § 140.405, RSMo, is inconsistent with § 140.520, RSMo. Section 140.520, RSMo, appears to direct that a prejudice-based analysis be employed in determining whether there has been substantial, not strict, compliance with § 140.405, RSMo. Respondents have not shown or argued that they suffered any prejudice to their rights of redemption caused by any of the purported defects in the Notice Letters.

commonly owned lots adjacent to each other as one parcel and not as three different parcels as required by the Kansas City Charter, Article V, § 14, was a mere irregularity that was not the basis for invalidation of the tax sale proceedings. *Phelps* followed *Taft v. McCulloch*, 135 Mo. 588, 37 S.W. 499 (1896) (which held that the failure of the county clerk to verify the land tax book by seal of the county court when the clerk verified the land tax book by affidavit was a mere irregularity that did not justify invalidation of the tax deed). *Taft* stated:

After the tax has been imposed by a legal and regular assessment and levy, the duty of the owner of the property to pay the tax arises. In the enforcement of payment by legal proceedings, or in selling the property for its payment under statutory powers, the owner stands upon his legal rights, and may demand that the requirements which affect his rights and interests shall be complied with at least substantially. But in adjusting the equities which this statute gives to the purchaser the court which, by the strongest implication, is required to exercise its equity powers, can go behind mere formal and technical requirements, and ascertain if the tax, which was discharged by the purchaser, was valid, and if the owner of the land had neglected to pay it before or after the sale. When these facts are shown, the equities which the statute declares are

complete. The purchaser pays an obligation due from the landowner to the state. The state receives and uses the money in payment of governmental expenses and other obligations. The provisions of the statute are approved by the judicial mind as being eminently just and equitable. The deed of the collector is made prima facie evidence of the proper assessment of the property and levy of the tax. In this proceeding the performance of subsequent official duties and details provided for the collection of the tax is immaterial, and one to be conclusively presumed.

37 S.W. at 501; *see also State ex rel. Stotts v. Farmers' & Merchants' Nat. Bank*, 144 Mo. 381, 46 S.W. 148, 149 (1898) (failure of the assessor's book to be authenticated by seal of the county court as required by § 7576, RSMo 1889, overcomes the prima facie case in favor of the tax, but if sufficient evidence of the validity of the tax is presented, the tax is valid).

The facts are:

(1) TYBE did not pay real estate taxes due for Parcel I for 2003, 2004 and 2005, see the Tax Sale Certificate of Purchase being part of Plaintiff's Parcel I Trial Exhibits Nos. 3 and 8 and Plaintiff's Parcel I Trial Exhibit No. 13, respectively.

(2) Appellant paid TYBE's taxes at the tax sale by purchasing the Tax Sale Certificate of Purchase, and the tax sale proceeds were distributed to governmental entities in

2006, Tr. at 36, 42; Parcel I Trial Exhibit No. 3, pages 30-31.

(3) Respondents received the Notice Letters on August 28, 2007, LF at 627.

(4) The St. Louis County Collector would have allowed Respondents to redeem at any time prior to the issuance of the Collector's Deed to Appellant on December 6, 2007, under the Collector's understanding of the applicable law in 2007. Tr. at 34-35, 48, 53, 57, 84-85, 91-92.

(5) Respondents have not shown that any certificate of redemption that would have been issued by the St. Louis County Collector to Respondents after August 26, 2007 would be invalid.

(7) Carmen Austell began the redemption process for TYBE by requesting and receiving redemption figures as of September 28, 2007 from the St. Louis County Collector, however, TYBE failed to redeem prior to the issuance of the Collector's Deed. Page 26 of Plaintiff's Parcel I Trial Exhibit No. 3 (the St. Louis County Collector's file); Tr. at 49-51; LF at 630.

(8) Nothing in the record shows that Respondents were prejudiced in the exercise of their rights of redemption that existed in fact prior to December 6, 2007, by any actions of Appellant, because Respondents continued to be able to redeem after August 26, 2007 under the practices of the St. Louis County Collector following the *Hobson* case, even if *Hobson* case is no longer good law.

Based on these facts, Appellant concludes that Respondents have not shown that the

purported defects complained of are anything more than technical objections, or mere irregularities, that are not a basis for invalidation of the Collector's Deed under § 140.520, RSMo.19

Further, tax sale purchasers are *de facto* officers of the government when they are attempting to perform duties assigned to them by § 140.405, RSMo. In *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009), the Court applied the Due Process Clause of the United States Constitution, U.S. Const. Amend. XIV,²⁰ to the actions of private tax sale purchasers

19 Section 140.405, RSMo, provides, in part: "Failure of the purchaser to comply with this section shall result in such purchaser's loss of all interest in the real estate." Appellant here argues that substantial compliance, not strict compliance, with § 140.405, RSMo, is required under § 140.520, RSMo.

20 *Scherleth* does not appear to be based on the Due Process provision of the Missouri Constitution, Mo. Const. art. I, § 10. The Due Process provision of the Missouri Constitution, Mo. Const. art. I, § 10, may not be co-extensive or broader than the Due Process Clause of the United States Constitution, U.S. Const. amend. XIV, in this context. The Missouri Constitution has a specific provision covering non-judicial tax lien foreclosure sales. Mo. Const. art. X, § 13 provides:

No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale shall contain the names of all record owners thereof, or the names of

acting under § 140.405, RSMo. *Scherleth* implicitly, if not explicitly, holds that tax sale purchasers are state actors for constitutional Due Process purposes. Section 140.405, RSMo, delegates the noticing function in the tax lien foreclosure process to private purchasers of tax liens to avoid imposing the cost of noticing on the county collectors. *M & P Enterprises, Inc. v. Transamerica Financial Services*, 944 S.W.2d 154, 157 (Mo. banc 1997). Section 140.405, RSMo, appoints tax sale purchasers as *de facto* officers in the exercise of the duties assigned to them by that statute. The purported failure of Appellant to “perform the duties assigned him or them, on the day or within the time specified” in § 140.405, RSMo, should not in and of itself be a basis for invalidation of the collector’s deed under § 140.520, RSMo.

Respondents cannot show how the purported untimeliness of the Notice Letters prejudiced their rights of redemption, because even though the Notice Letters were not mailed at least 90 days prior to August 26, 2007 (the date found by the trial court to be the expiration of the redemption period, LF at 632), the evidence was that Respondents could have redeemed up

all owners appearing on the land tax book, and all other
information required by law.

In *Mitchell v. Atherton*, 563 S.W.2d 13, 16-17 (Mo. Banc 1978), this Court found that Mo. Const. art. X, § 13 was implemented by §§ 140.150 and 140.170, RSMo, which only required published notice at the time *Mitchell* was decided. Mo. Const. art. X, § 13, specifies the constitutionally required content of non-judicial tax sale notices and does not appear to require notice of the duration of the right of redemption.

until December 6, 2007, based upon the practice of the St. Louis County Collector in following the *Hobson* case.

CONCLUSIONS UNDER POINT I

The trial court erred in denying Appellant relief under Count I of Appellant's Petition on the ground that the Notice Letters were not mailed at least 90 days prior to August 26, 2007 (the purported expiration of the right of redemption found by the trial court) in purported violation of § 140.405, RSMo, because: (A) Respondents' right of redemption expired on December 6, 2007; and (B) under § 140.520, RSMo, and the facts of this case, the failure of Appellant, as a *de facto* officer of St. Louis County, to mail the Notice Letters at least 90 days prior to August 26, 2007, is a mere irregularity and not a ground to invalidate the Collector's Deed, because Respondents continued to be able to redeem after August 26, 2007 under the practices of the St. Louis County Collector following *Hobson*.

II.

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT'S PETITION ON THE GROUND THAT APPELLANT'S NOTICE LETTERS DID NOT INFORM RESPONDENTS HOW LONG THEY HAD TO EXERCISE THEIR RIGHT TO REDEEM OR BE FOREVER BARRED FROM DOING SO, AND PURPORTEDLY FAILED TO COMPLY WITH SECTION 140.405, RSMO, BECAUSE: (A) SECTION 140.405, RSMO, WAS DRAFTED TO INTEGRATE WITH RELEVANT CASE LAW ESTABLISHING THE *HOBSON* REDEMPTION PERIOD; (B) THERE IS NO UNIVERSALLY APPLICABLE REDEMPTION PERIOD ALLOWING TAX SALE PURCHASERS TO PROVIDE ADVANCE NOTICE OF THE EXPIRATION OF THE REDEMPTION RIGHTS OF DELINQUENT TAXPAYERS AND OTHER INTERESTED PARTIES, AS VARIOUS STATUTES PROVIDE FOR SPECIAL RIGHTS OF REDEMPTION THAT VARY FROM THE *HOBSON* REDEMPTION PERIOD DEPENDING UPON FACTS AND CIRCUMSTANCES THAT THE TAX SALE PURCHASER CANNOT KNOW OR WOULD KNOW ONLY WITH GREAT DIFFICULTY AT THE TIME THE SECTION 140.405 NOTICE IS SENT; (C) TAX SALE PURCHASERS CANNOT GIVE ADVANCE NOTICE OF THE TIME WHEN THEY MAY BE AUTHORIZED TO ACQUIRE A COLLECTOR'S DEED, AS THE DATE, IF ANY, WHEN ALL LAWFUL REQUIREMENTS HAVE BEEN SATISFIED AUTHORIZING THE TAX

SALE PURCHASER TO ACQUIRE A COLLECTOR'S DEED CANNOT BE KNOWN IN ADVANCE; (D) NEITHER SECTION 140.405, RSMO, NOR CONSTITUTIONAL PRINCIPLES OF DUE PROCESS REQUIRE A TAX SALE PURCHASER TO PROVIDE ADVANCE NOTICE OF THE TIME LIMITS APPLICABLE FOR REDEMPTION, THE SPECIFIC PROCEDURES THAT MUST BE FOLLOWED, OR ANY OTHER DETAILS ATTACHING TO THE RIGHT OF REDEMPTION FROM THE TAX SALE; (E) ANY PURPORTED DEFECTS IN NOTICING WERE NOT A GROUND TO INVALIDATE THE COLLECTOR'S DEED UNDER SECTION 140.520, RSMO; AND (F) THE NOTICE LETTERS MAILED AUGUST 27, 2007, INFORMED THE DELINQUENT TAXPAYER AND OTHER INTERESTED PARTIES OF THEIR RIGHT TO REDEEM, WHICH IS ALL THAT IS REQUIRED BY SECTION 140.405, RSMO.

POINT II(A):

SECTION 140.405, RSMO, INTEGRATES WITH THE *HOBSON* REDEMPTION PERIOD; THE *HOBSON* REDEMPTION PERIOD HAS NO FIXED DURATION; THEREFORE, SECTION 140.405 NOTICE LETTERS CANNOT GIVE NOTICE OF A REDEMPTION PERIOD WITH A FIXED DURATION

As indicated in the *Boston* and *United Asset Mgmt. Co.* cases, the phrase "authorized to acquire the deed" in § 140.405, RSMo, refers to the window of time, which is currently more than one year and less than two years from the date of the tax sale, in which tax sale

purchaser elects to acquire the deed with lawful authority. *Boston*, 807 S.W.2d at 218-219; *United Asset Mgmt. Co.*, 322 S.W.3d at 173 n.10; *see also Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court upon transfer), Slip Op. at 4-6. As indicated elsewhere in this Brief, Appellant believes that the phrase, “authorized to acquire the deed”, is a reference to *Hobson*.

There are a number of legal requirements that the tax sale purchaser must meet in order to be authorized to acquire a collector’s deed. The tax sale purchaser must:

The tax sale purchaser must:

- (1) Pay subsequent taxes, § 140.440, RSMo;
- (2) Tender the original of the certificate of purchase, § 140.420, RSMo,
- (3) Tender recording fees for the collector’s deed under § 140.410, RSMo,
- (4) Comply with statutory noticing requirements and any noticing requirements set forth in applicable administrative rules or decisions²¹, including the filing of

²¹ Conference Committee Substitute for House Committee Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 117, First Regular Session, 96th General Assembly, enacted in 2011 repealed § 140.660, RSMo, which stated:

The state tax commission shall prescribe the forms of all certificates, blanks and books required under the provisions of this law and shall, with the advice of the attorney general, decide all questions that arise in reference to the true construction or

filing of an affidavit, such as § 140.405, RSMo, or 18 U.S.C. § 3613, or 26 U.S.C. § 7426 and 26 C.F.R. §§ 301.7425-1, 301.7425-2, 301.7425-3, and 301.7425-4;

- (5) Comply with any noticing requirements imposed by the United States or Missouri Constitutions, *e.g.*, *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006) and *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009) (requiring tax sale purchasers to take additional reasonable steps, when practicable, to provide notice when certified mail is returned); and
- (6) Comply with any other requirements imposed by any other laws applicable to the particular circumstances involved in any particular tax sale.

Within the currently one-year window for obtaining a collector's deed currently beginning one year from the date of the tax sale established by §§ 140.340 and 140.410, RSMo, the purchaser at a first or second sale has wide latitude in determining when a collector's deed is authorized to be issued. *Boston*, 807 S.W.2d at 218; *United Asset Mgmt. Co.*, 332 S.W.3d at 173 n.10; *see also Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court upon transfer), Slip Op. at 4-

interpretation of this law, or any part thereof, with reference to the powers and duties of county or township tax officers, and the decision shall have force and effect until modified or annulled by the judgment or decree of a court of competent jurisdiction.

6. There was no fixed one-year redemption period under § 140.340, RSMo, ending on August 26, 2007, as found by the trial court. LF at 632.

POINT II(B):

**NOTICE LETTERS CANNOT GIVE NOTICE OF A UNIVERSALLY
APPLICABLE REDEMPTION PERIOD**

Not only was there no fixed redemption period of one year ending on August 26, 2007, there is no universally applicable redemption period for all delinquent taxpayers or other interested parties. Certain special statutory rights of redemption exist that make the right of redemption an individualized matter that is specific to the facts and circumstances of the delinquent taxpayer or other interested party. For example, under § 140.350, RSMo, if the delinquent taxpayer or other interested party is an infant, incapacitated or disabled person as defined in Chapter 475, RSMo, there are special rights of redemption. *See Roberts v. Glasgow*, 860 S.W.2d 26 (Mo. App., E.D. 1993) (concluding that no adjudication of disability is required by this statute, and that partially disabled persons are disabled persons for purposes of § 140.350, RSMo) and *Covey v. Town of Somers*, 351 U.S. 141, 76 S. Ct. 724, 100 L. Ed. 1021 (1956) (notice provided to a person without a guardian or conservator who was known to be mentally incompetent did not comport with principles of due process of law).

The 2009 Eastern District opinions²² have not even mentioned or considered, and have nothing to say about § 140.350, RSMo, in elucidating the notice of “right to redeem” that must be contained in a notice under § 140.405, RSMo.

Also complicating the duration of tax sale redemption rights are federal laws, such as 26 U.S.C. § 7425 (giving the IRS a redemption period of 120 days after the issuance of the collector’s deed), *Glasgow Realty LLC v. Withington*, 345 F.Supp.2d 1025 (E.D. Mo., 2004), 18 U.S.C. § 3613 (giving the United States authority to collect certain fines), and 11 U.S.C. § 108(b) (providing a minimum 60 day period for a trustee in bankruptcy to exercise redemption rights), *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010).

Because of the complexities of determining delinquent taxpayer’s redemption rights and the lack of information available to tax sale purchasers to determine the facts necessary to legally and correctly advise delinquent taxpayers of the duration of their redemption rights, unreasonable, oppressive or absurd results are reached if notice of the “right to redeem” is interpreted to require notice of the duration or expiration of the right to redeem. *United Asset Mgmt. Trust Co.*, 332 S.W.3d at 161 (one canon of statutory construction is to avoid unreasonable, oppressive or absurd results in interpreting statutes).

²² *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009).

POINT II(C):

**TAX SALE PURCHASERS CANNOT GIVE ADVANCE NOTICE OF WHEN OR
IF THEY WILL BE ENTITLED TO ACQUIRE A COLLECTOR'S DEED**

The existing case law does not prescribe any consistent rules for the required content of a notice of tax sale redemption rights after a first or second offering delinquent tax sale under § 140.405, RSMo.

As indicated in Point I of this Brief, requiring notices of the right of redemption from first or second offering tax sales under § 140.405, RSMo, to state that there is a maximum, fixed one-year redemption period consistent with *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009), is in irreconcilable conflict with *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S. W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949); *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970); *Boston v. Williamson*, 807 S.W.2d 216, 217-218 & n.3 (Mo. App., W.D. 1991); *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 171 n. 9 (Mo. App., W.D. 2010); *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App., W.D. 2011); and *U.S. Bank National Association v. Boykin (In re Carl I.*

Boykin, III), 437 B.R. 346 (Bankr., E.D.Mo. 2010); *see also Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court), Slip Op. at 6, and is inconsistent with *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992) (concluding those entitled to notice under § 140.405, RSMo, includes anyone “who has an interest that could be lost when the collector's deed is issued”), and *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996) (“Until the execution of a tax deed, defendant and all other parties in interest, including plaintiffs, have the right to redeem the property by paying the delinquent taxes.”).

Cedarbridge LLC v. Eason, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009) held that § 140.405, RSMo, requires notices of tax sale redemption rights from first or second offering delinquent tax sales to “inform the recipient that s/he has one year from the date of the tax sale to redeem the property or be forever barred from doing so,” citing *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 612-613 (Mo. App., E.D. 2009). *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 (Mo. App., S.D. 2010) held that § 140.405, RSMo, requires notices of tax sale redemption rights from first or second offering delinquent tax sales to “inform persons of the time frame in which they must act to redeem their property or be forever barred from doing so”, citing *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 465 (Mo. App., E.D. 2009), citing *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 612-613 (Mo. App., E.D. 2009), citing *Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273, 277 (Mo. App., E.D. 2006). *Drake Development & Construction LLC v. Jacob*

Holdings, Inc., 306 S.W.3d 171, 174 (Mo. App., S.D. 2010) fails to state the “time frame” that must be included in a tax sale redemption notice. *See also Crossland v. Thompson*, 317 S.W.3d 635, 643-644 (Mo. App., S.D. 2010).

Formulating the required content of a tax sale redemption notice from a first or second offering delinquent tax sale under § 140.405, RSMo, to require notice that delinquent taxpayers and other interested parties will be “forever barred” if they fail to redeem their interest at any pre-determined time is inconsistent with the formulation of the duration of the right of redemption from first or second offering delinquent tax sales in *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942). *Hobson* allows redemption at any time prior to the time when a tax sale purchaser is authorized to acquire a collector’s deed to the property, so long as the tax sale certificate of the tax sale purchaser has not expired under § 140.410, RSMo. Informing delinquent taxpayers and other interested parties that they have one year to redeem or else they are “forever barred” would be incorrect. *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 171 n.9 (Mo. App., W.D. 2010).

The pre-HB 1316 version of § 140.405, RSMo, contained two “90-day” provisions: A provision requiring notice “[a]t least ninety days prior to the date when a purchaser is authorized to acquire the deed”, and a second “90-day” provision in the second sentence of the 1998 amendments to § 140.405, RSMo, that measured the duration of the right of redemption from third sales by stating that interested parties have “ninety days to redeem said

property or be forever barred from redeeming said property.” Section 140.405, RSMo.23
See also Ndegwa, Slip Op. at 23 (“Additionally, the 90-day language of Section 140.405 included by Appellant is only applicable in the case of a third offering tax sale and not first and second offering tax sales, and was therefore misleading.”) *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009) held that a notice of tax sale redemption rights from a first or second offering delinquent tax sale that told the delinquent taxpayer and other interested parties to contact the county collector within 90 days was inaccurate and misleading as a matter of law (without evidence that the delinquent taxpayer or other interested parties relied on such statement to their detriment). The notice letter in *Hames* was admittedly inartfully drafted, and no evidence is cited in *Hames* as to which of the two “90-

23 Subsection 6 of § 140.405, as enacted by HB 1316, measures the right of redemption for third offering sales from the date of mailing of the notice. HB 1316 legislatively abrogates prospective application of holdings in *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 170 (Mo. App., W.D. 2010), *Keylien Corporation v. Johnson*, 284 S.W.3d 606, 613 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 466 (Mo. App., E.D. 2009), and *Brock v. Caldwell*, Appeal No. SD31206 (Mo. App., S.D. January 27, 2012) (may be subject to post-opinion motions or applications), Slip Op. at 5, that the redemption period for third offering sales begins when an affidavit of proper notice is filed with the county collector beginning August 28, 2010. *See also Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273 (Mo. App., E.D. 2006).

day” provisions in § 140.405, RSMo, is being referenced in the notice letter. However, the mere mention of the “at least 90-day” period in a redemption notice for a first or second offering should not be found to be inaccurate and misleading as a matter of law, because the “at least 90-day” provision of the pre-HB 1316 version of § 140.405, RSMo, applies to first or second offerings.

The tax sale purchaser cannot know in advance when or if the tax sale purchaser will become authorized to obtain a collector’s deed (because the delinquent taxpayer and other interested party have a right to redeem their interests from the tax lien foreclosure process). The tax sale purchaser cannot provide advance notice of that date in a § 140.405 notice letter. This is especially true if § 140.405 notices are returned for reasons making the *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006) and *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009) cases applicable. If *Jones* and *Scherleth* are applicable, the tax sale purchaser is required to begin the § 140.405 noticing process over again by taking additional reasonable steps, if practicable, to provide notice to delinquent taxpayers or other interested parties. These additional reasonable steps may include providing certified and first class mailed notice to a new address if the return of the notices previously mailed to the then last known available address shows that the address to which the original § 140.405 Notice Letters were mailed is no longer a good address. This extends the time before the tax sale purchaser will be lawfully authorized to acquire a collector’s deed under *Hobson*.

POINT II(D):

**NEITHER SECTION 140.405, RSMO, NOR CONSTITUTIONAL PRINCIPLES
OF DUE PROCESS REQUIRE A TAX SALE PURCHASER TO PROVIDE
ADVANCE NOTICE OF THE TIME LIMITS APPLICABLE FOR
REDEMPTION, THE SPECIFIC PROCEDURES THAT MUST BE FOLLOWED,
OR ANY OTHER DETAILS ATTACHING TO THE RIGHT OF REDEMPTION
FROM THE TAX SALE**

A.

STATUTORY CONSTRUCTION

The Missouri Court of Appeals, Western District, has held that “there is no due process requirement to inform those receiving notice of the specific time limits applicable for redemption, the specific procedures that must be followed, or any other details, nor is there any such requirement in § 140.405.” *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 175 (Mo. App., W.D. 2010); *Harpagon MO LLC v. Clay County Collector*, 335 S.W.3d 99, 105 (Mo. App., W.D. 2011). *See also Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court upon transfer), Slip Op. at 6-7; and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346 (Bankr., E.D.Mo. 2010).

United Asset Mgmt. Trust Co. v. Clark, 332 S.W.3d 159, 175 (Mo. App., W.D. 2010) is extensive and exhaustively covers the law regarding the required content of notices of tax

sale redemption rights from first or second offering delinquent tax sales under § 140.405, RSMo. The reasoning and rationale of that opinion on the required content of § 140.405 notices is far superior to anything on that subject stated in *Keylien Corporation v. Johnson*, 284 S.W.3d 606 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009), *Hames v. Bellistri*, 300 S.W.3d 235 (Mo. App., E.D. 2009), *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 (Mo. App., S.D. 2010), *Crossland v. Thompson*, 317 S.W.3d 635, 643-644 (Mo. App., S.D. 2010), *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 11-24, or *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012). Of these cases, the most extensive opinions on the subject of the required content of tax sale redemption notices from first or second offering delinquent tax sales are *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011) and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012).

Ndegwa v. KSSO, LLC, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18-22, cites various rules or canons of statutory construction, including: The doctrine of *in pari materia* (statutes relating to the same subject are considered together and harmonized if possible), *Ndegwa*, Slip Op. at 19-20; that absent an express definition, statutory language is to be given its plain and ordinary meaning, *Ndegwa*, Slip Op. at 19; that meaning is to be given to each word used in the legislative enactment, insofar as possible,

and one word of the statute should not be considered a needless repetition of another, *Ndegwa*, Slip Op. at 21; that courts presume every word in a statute has meaning, *Ndegwa*, Slip Op. at 21; and that there is a presumption that the legislature does not intend to create meaningless legislative provisions, *Ndegwa*, Slip Op. at 21. *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012), Slip Op. at 8-9, appears only to cite the doctrine of *in pari materia* in its construction of §§ 140.340 and 140.405, RSMo.

The correct application of these rules or canons of statutory construction support the statutory construction of what is now codified in §§ 140.340, 140.360, 140.410, and 140.420, RSMo, in *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942), *Bullock v. Peoples Bank of Holcomb*, 351 Mo. 587, 173 S.W.2d 753, 758 (Mo. 1943), *State ex rel. Baumann v. Marburger*, 348 Mo. 164, 182 S.W.2d 163, 165-166 (Mo. 1944), *Wetmore v. Berger*, 354 Mo. 166, 188 S.W.2d 949, 953 (Mo. 1945), *Strohm v. Boden*, 359 Mo. 573, 222 S.W.2d 772, 776 (Mo. 1949), *Powell v. City of Creve Coeur*, 452 S.W.2d 258, 261-262 (Mo. App., St. L. 1970), *Boston v. Williamson*, 807 S.W.2d 216, 217-218 & n.3 (Mo. App., W.D. 1991), *Campbell v. Siegfried*, 823 S.W.2d 156, 158 (Mo. App., E.D. 1992), *York v. Authorized Investors Group, Inc.*, 931 S.W.2d 882, 888 (Mo. App., E.D. 1996), *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 164 & 171 n. 9 (Mo. App., W.D. 2010), *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99, 104-105 (Mo. App., W.D. 2011), and *U.S. Bank National Association v. Boykin (In re Carl I. Boykin, III)*, 437 B.R. 346

(Bankr., E.D.Mo. 2010); *see also Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court), Slip Op. at 6-7.

Subsection 1 of what is now codified in § 140.340, RSMo, does not state that interested parties “shall” redeem their interest in the time period specified or be forever barred from doing so, nor does subsection 1 specify any consequence or any other result if one fails to redeem within the subsection 1 time period. The plain and ordinary meaning of the word “may” connotes the permissive and directory, not a mandatory duty. *Deming v. Metropolitan Engineering & Construction Co.*, 154 Mo. App. 540, 136 S.W. 740, 742 (K.C. 1911).

It is true that § 140.405, RSMo, exists to protect the Due Process rights of those with substantive interest in property, *Hames v. Bellistri*, 300 S.W.3d 235, 239 (Mo. App., E.D. 2009); *Brock v. Caldwell*, Appeal No. SD31206 (Mo. App., S.D. January 27, 2012) (may be subject to post-opinion motions or applications), Slip Op. at 4. It is also true that § 140.405, RSMo, is mandatory, because of its use of the word, “shall”, and because of the specification of the consequence for failure to comply with that statute as being a loss of all interest in the property. *See, e.g. Hutchison v. Cannon*, 29 S.W.3d 844, 847 (Mo. App., S.D. 2000); *Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273, 276-277 (Mo. App., E.D. 2006); *Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 467 (Mo. App., E.D. 2009); *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171, 174 (Mo. App., S.D. 2010).²⁴

²⁴ The cases holding that non-compliance with § 140.405, RSMo, requires that the tax sale

None of the cases holding that § 140.405, RSMo, is mandatory have considered the effect of § 140.520, RSMo, on whether substantial compliance or strict compliance with § 140.405, RSMo, is required. Section 140.520, RSMo, states in part: “No ... mere irregularity of any kind in any of the proceedings, shall invalidate any such proceeding, or the title conveyed by the tax deed;” *State ex rel. Howard v. Timbrook’s Estate*, 240, Mo. 226, 144 S.W. 843, 846-847 (1912) construed § 11521, RSMo 1909, a predecessor of § 140.520, RSMo, as repealing the common law rule of strict construction of tax sale statutes and replacing that common law rule with a more liberal statutory rule of construction whereby technical objections, or “mere irregularities”, are insufficient to invalidate tax sale proceedings. In this case, the delinquent taxpayer or other interested parties have not alleged that they relied to their detriment on any purported defects in the Notice Letters sent under § 140.405, RSMo. Without such allegations, it is difficult to see how any purported defects in such a notice can be anything other than a “mere irregularity” or technical objection that does not invalidate a collector’s deed under § 140.520, RSMo.

purchaser to lose all interest in the property fail to consider the effect of §§ 140.550 and 140.570, RSMo, which transfer the lien for taxes back to the tax sale purchaser under certain circumstances if the collector’s deed is found to be invalid. The priority of the judgment lien for recoupment costs of the tax sale purchaser is important if a lienholder’s interest in the property is resurrected by the setting aside of a collector’s deed.

The mandatory nature of § 140.405, RSMo, or its role in protecting Due Process rights should not be read as recasting subsection 1 of § 140.340, RSMo, as a mandatory, maximum and fixed redemption period under § 1.120, RSMo. *Hobson* interpreted the predecessor of subsection 1 of § 140.340, RSMo, as establishing a minimum, not maximum redemption period in a manner that has been followed under the principle of *stare decisis* for approximately seventy years ago. The substantive language of § 140.340, RSMo, has not changed since *Hobson* was handed down, except as to the changes in time periods enacted by SB 295 in 2003 and the 1939 amendments to the Jones-Munger Act, Chapter 140, RSMo, that make *Hobson* inapplicable to third offering delinquent tax sales.

Subsection 4 of § 140.340, RSMo, provides that tax sale purchasers lose the right to collect interest on tax sale certificates if purchasers fail to obtain a collector's deed within six months after the expiration of the one-year period specified in subsection one. *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020, 1023 (Mo. 1942) indicates that if the right of redemption absolutely ceases at the end of the period now specified in subsection 1 of § 140.340, RSMo, there would be no purpose in a provision that the redemptioner could not be charged interest after the end of that period. *Hobson*, 163 S.W.2d at 1023. In essence, the reconciliation of subsections 1 and 4 of what is now codified in § 140.340, RSMo, in *Hobson* is this Court's application of the rules or canons of statutory construction cited in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18-22, and

Sneil, LLC v. TYBE Learning Center, Inc., Appeal No. ED96828 (Mo. App., E.D. February 28, 2012), Slip Op. at 8-9, such as: (1) that statutes are to be construed *in pari materia* and read together and harmonized, if possible, *Ndegwa*, Slip Op. at 19, *Sneil*, Slip Op. at 8-9; (2) that meaning is to be given to each word used in the legislative enactment, insofar as possible, and one word of the statute should not be considered a needless repetition of another, *Ndegwa*, Slip Op. at 21; (3) that courts presume every word in a statute has meaning, *Ndegwa*, Slip Op. at 21; and (4) that there is a presumption that the legislature does not intend to create meaningless legislative provisions, *Ndegwa*, Slip Op. at 21. This Court's adoption of the opinions in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011) and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012) would make subsection 4 of § 140.340, RSMo, meaningless.

Subsection 2 of § 140.360, RSMo, prohibit compensation to tax sale purchasers for improvements made prior to redemption if those improvements are made before the end of one year from the tax sale. *Hobson v. Elmer*, 349 Mo. 1131, 163 S.W.2d 1020 (Mo. 1942) indicates that it would be unnecessary to state that the redemptioner was not required to make compensation for improvements placed on the land before the expiration of the period specified in what is now codified in subsection 1 of § 140.340, RSMo, and impliedly that the redemptioner was required to make such compensation after the end of that period, if the redemptioner could not redeem at all after the end of that period. *Hobson*, 163 S.W.2d at 1023. Again, the reconciliation of what is now codified in subsection 1 of § 140.340, RSMo,

and subsection 2 of § 140.360, RSMo, in *Hobson* is this Court's application of the following rules or canons of statutory construction cited in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18-22 and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012), Slip Op. at 8-9: (1) that statutes are to be construed *in pari material* and read together and harmonized, if possible, *Ndegwa*, Slip Op. at 19, *Sneil*, Slip Op. at 8-9; (2) that meaning is to be given to each word used in the legislative enactment, insofar as possible, and one word of the statute should not be considered a needless repetition of another, *Ndegwa*, Slip Op. at 21; (3) that courts presume every word in a statute has meaning, *Ndegwa*, Slip Op. at 21; and (4) that there is a presumption that the legislature does not intend to create meaningless legislative provisions, *Ndegwa*, Slip Op. at 21. This Court's adoption of the opinions in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011) and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012) would make subsection 2 of § 140.360, RSMo, meaningless.

Section 140.410, RSMo, provides that tax sale certificates expire two years after the tax sale. If the "date when a purchaser is authorized to acquire the deed" under § 140.405, RSMo, is a date certain one year from the date of the tax sale under subsection 1 of § 140.340, RSMo, then logic would dictate that all collector's deeds would be required to be issued in a single day one year from the date of the tax sale, as there would be only one day

when a purchaser could be authorized to acquire the collector's deed, even though the tax sale certificates of purchase do not expire for another year under § 140.410, RSMo.

Sneil, Slip Op. at 9-10, states:

Sneil is wrong in its assertion that the trial court incorrectly found that the redemption period was one year, and its reliance on § 140.410 is misplaced. § 140.410 places a time limit on the purchaser to acquire a Collector's deed within two years of the date of the tax sale, and places the burden on the purchaser to acquire the deed in a timely manner, or have the certificate of purchase cancelled. It does not address the rights of the landowner or other interested party in the real property at issue to redeem that property, but rather the ability of a purchaser at a tax sale to attempt to acquire a collector's deed. **Further, the ability of the landowner to redeem after the one-year period from the date of the tax sale due to the failure of the purchaser to acquire a collector's deed is not the same as the absolute right to redeem that exists under § 140.340 during the year following the tax sale.**

Sneil, Slip Op. at 9-10 (emphasis added). *Sneil* appears to recognize the right of a delinquent taxpayer to redeem after the period specified in subsection 1 of § 140.340, RSMo, has

expired and before the expiration of the tax sale certificate under § 140.410, RSMo, in the manner set forth in *Hobson* and the cases following *Hobson*. *Sneil* would invalidate the collector's deed in this case for the failure of Appellant to state that Respondents had one year from the date of the tax sale to redeem or they would be "forever barred" from redeeming and the failure of Appellant to mail notice at least 90 days prior to the expiration of the one-year right of redemption, even though *Sneil* appears to state that the right of redemption continues after the expiration of the one year period currently set forth in subsection 1 of § 140.340, RSMo. Appellant has trouble understanding the reasoning of the Court in the *Sneil* opinion. If the right to redeem exists after the one-year period set forth in subsection 1 of § 140.340, RSMo, then it would be misleading to give notice that delinquent taxpayers and other interested parties have one year to redeem or they will be "forever barred" from redeeming. Possibly Respondents may be able to tell us how *Sneil* is consistent in its interpretation of §§ 140.340 and 140.410, RSMo. To the extent that Appellant understands the interpretation of § 140.410, RSMo, in *Sneil* and *Ndegwa*, this Court's adoption of the opinions in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011) and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012) appear to make that part of § 140.410, RSMo, providing for the expiration of tax sale certificates two years after the tax sale either meaningless or problematic.

Section 140.420, RSMo (as enacted after SB 295 and prior to H.B. 1316), provides that the Collector's Deed shall be issued at the expiration of one year upon production of the tax sale certificate. *Hobson* seems to recognize that the language of the original version of § 140.420, RSMo, tends to support a conclusion that the time period specified in subsection 1 of § 140.340, RSMo, is a fixed period; however, *Hobson* found that that language of § 140.420, RSMo, could only be reconciled with the other provisions of the Jones-Munger Act, Chapter 140, RSMo, in the manner described herein. *Hobson*, 163 S.W.2d at 1023.

Although the enactment of HB 1316 in 2010 may be largely in response to *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009) and *Investment Corporation of the Virginias, Inc. v. Acquaviva*, 302 S.W.3d 195 (Mo. App., E.D. 2009), some of the provisions of that legislative enactment refer to a one-year right of redemption, *e.g.* the post-HB 1316 versions of §§ 140.310.6 and 140.420, RSMo, presumably based upon legislative knowledge of cases such as *Keylien Corporation v. Johnson*, 284 S.W.3d 606 (Mo. App., E.D. 2009), *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., E.D. 2009), and *Hames v. Bellistri*, 300 S.W.3d 235 (Mo. App., E.D. 2009) holding that there is a fixed one-year redemption period from first or second offering sales. *See, e.g. Sell v. Ozarks Medical Center*, 333 S.W.3d 498, 508 (Mo. App., S.D. 2011). The 2010 amendments enacted in HB 1316 did not change any of the language of the substantive provisions of §§ 140.340, 140.360, and 140.410, RSMo, interpreted in *Hobson*. The post-HB 1316 versions of §§ 140.310.6 and 140.420, RSMo, refer to a one-year redemption period. The 2010 amendments to § 140.420, RSMo,

stating that there is a one-year right of redemption, does not clear up the other inconsistent provisions of the Jones-Munger Act, Chapter 140, RSMo, discussed in *Hobson*.

Subsection 1 of § 140.310, RSMo, provides that tax sale purchasers have the right to possession of non-homestead property one year from the date of the tax sale, and provides in subsection 4 thereof that upon subsequent redemption, the actual rent collected is credited toward the redemption price. *But see Cedarbridge LLC v. Eason*, 293 S.W.3d 462, 468-471 (Mo. App., E.D. 2009) (where the Court ignored this statute and awarded damages based on reasonable rental value rather than actual rent collected under subsection 4 of § 140.310, RSMo). The 2010 amendments adding subsection 6 to § 140.310, RSMo, do not answer the conundrum presented why subsection 1 of § 140.310, RSMo, specifies that a tax sale purchaser is authorized to take possession of non-homestead property at the expiration of one year without the issuance of a collector's deed if the total redemption period is one year from the date of the tax sale? Again, § 140.310, RSMo, would be meaningless if this Court adopts the opinions in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011) and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012), assuming *arguendo* that § 140.310, RSMo, has any continuing validity after *Cedarbridge LLC v. Eason*, 293 S.W.3d 462 (Mo. App., 2009). The 2010 amendments to § 140.310, RSMo, adding subsection 6 thereof stating that there is a one-year right of redemption does not clear up the other inconsistent provisions of the Jones-Munger Act, Chapter 140, RSMo, discussed in *Hobson*.

Hobson is correct in holding that there is one and only one manner in which these conflicting provisions can be harmonized; that is, to reconcile these conflicting provisions by holding that the time period in what is now codified in subsection 1 of § 140.340, RSMo, is an absolute right of redemption, but that the right of redemption continues thereafter until the tax sale purchaser has the right to obtain a collector's deed or the tax sale certificate expires under the provisions of what is now codified in § 140.410, RSMo. *Hobson*, 163 S.W.2d at 1023. Application of the rules of statutory construction espoused in *Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18-22, and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012) requires the recognition of the validity of the reasoning in *Hobson* and the cases following *Hobson*.

B.

CONSTITUTIONAL DUE PROCESS PRINCIPLES

Ndegwa v. KSSO, LLC, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 16-17, concludes that the citations to *City of West Covina v. Perkins*, 525 U.S. 234, 236-237, 119 S.Ct. 678, 142 L.Ed.2d 636 (1999) in *United Asset Mgmt. Trust Co.*, 332 S.W.3d at 173-175, are not applicable, because *West Covina* did not involve a permanent taking of rental property for a fraction of its worth or the time-sensitive right of the rental property owner to redeem it or forever lose it. *Ndegwa*, Slip Op. at 16-17. *See also Sneil*, Slip Op. at 8, 12. *Ndegwa* and *Sneil* found that there are dissimilarities between the loss of

real property from a delinquent tax sale and the situations in the cases cited in *United Asset Mgmt. Co.* based upon a number of factors, such as the seriousness, scope and permanency of the taking; the parties involved, the background of the taking, and the differences in procedure, whether criminal, administrative or civil. *Ndegwa*, Slip Op. at 17, *Sneil*, Slip Op. at 8, 12.

Prior to 1983, the “caretaker doctrine” governed due process requirements relative to delinquent tax sales based on the principle that those who own land are charged with knowledge of the real estate taxation laws applicable to them, and it was the responsibility of owners and lien holders to take care to keep themselves informed of proceedings affecting their property. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 803, 103 S.Ct. 2706, 77 L. Ed. 2d 180 (1983) (O’Connor, J. dissenting) (“The historical justification for constructive notice was that those with an interest in property were under an obligation to act reasonably in keeping themselves informed of proceedings that affected that property.”); *Longyear v. Toolan*, 209 U.S. 414, 418, 28 S.Ct. 506, 52 L.Ed. 859 (1908) (“The owner of property whose taxes, duly assessed, have remained unpaid for more than one year, must be held to the knowledge that proceedings for sale are liable to be begun as soon as practicable after the 1st day of June, and that the law contemplates that they will be ended before December 1, when the sales will be made by the county treasurer. The proceedings are inscribed on the public records and otherwise made notorious. If he exercises due vigilance, he cannot fail to learn of their pendency, and that full opportunity to defend is afforded to

him. This satisfies the demands of due process of law, and the judgment is affirmed.”); *Ballard v. Hunter*, 204 U.S. 241, 262, 27 S.Ct. 261, 51 L.Ed. 461 (1908)(“It charges everyone with knowledge of its provisions; of its proceedings it must, at times, adopt some form of indirect notice, and indirect notice is usually efficient notice when the proceedings affect real estate. Of what concerns or may concern their real estate men usually keep informed, and on that probability the law may frame its proceedings; indeed, must frame them, and assume the care of property to be universal, if it would give efficiency to many of its exercises.”).

Beginning in 1983 a sea-change occurred in the constitutional law of Due Process with respect to delinquent tax sales occurred with the handing down of *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 803, 103 S.Ct. 2706, 77 L. Ed. 2d 180 (1983), wherein Due Process principles were interpreted to require mailed notice to certain lienholders prior to a tax sale. *See also Lohr v. Cobur Corporation*, 654 S.W.2d 883, 885-886 (Mo. banc 1983), *subsequent appeal*, 721 S.W.2d 763 (Mo. App., E.D. 1986).

Even in the post-*Mennonite* era, the sentiments of the caretaker doctrine may not have been entirely erased. *See, e.g. Trapf v. Lohr*, 666 S.W.2d 414, 415 (Mo. Banc 1984), *appeal dismissed*, 469 U.S. 1013, 105 S.Ct. 423, 83 L.Ed.2d 351 (1984) (“At some point a property owner's presumptive duty to preserve his property outweighs the responsibility of a tax collector to provide more extensive forms of notice.”) and *Schwartz v. Dey*, 780 S.W.2d 42, 44-45 (Mo. Banc 1989).

In less than 30 years since *Mennonite* was handed down, the Missouri Court of Appeals, Eastern District has concluded in the cases cited herein that constitutional principles of Due Process have changed from not requiring any mailed notice at all of tax sale proceedings, as was the situation prior to the handing down of the 5-4 decision in *Mennonite*, into a constitutional obligation to provide notice of the pendency and duration of the right of redemption based upon a balancing of various factors, such as, whether the loss is of real estate, the seriousness, scope and permanency of the taking, the parties involved, the background of the taking, and the differences in procedure, whether criminal, administrative or civil. *Ndegwa*, Slip Op. at 9; *Sneil*, Slip Op. at 8.

In *Matthews v. Eldridge*, 424 U.S. 319, 334-335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), the Court stated in the context of administrative proceedings involving social security benefits:

More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative

burdens that the additional or substitute procedural requirement would entail.

424 U.S. at 334-335.

In *Dusenbery v. United States*, 534 U.S. 161, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002) (which involved civil forfeiture proceedings involving an automobile and cash in the amount of \$21,939), the Court rejected the balancing of factors test of *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) as an all-inclusive test in determining the adequacy of the method used to provide notice, and the Court adopted the more “straightforward test” of reasonableness under the circumstances set forth in *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950).

Under the *Mullane* standard, notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” 393 U.S. at 314. “Th[e] right to be heard has little reality or worth unless one . . . can choose for himself whether to appear or default, acquiesce or contest.” *Id.*; see also *West Covina*, 525 U.S. at 240 (citing *Mullane* for this proposition).

The nature of the private interest affected—in this case, loss of a day care center—and the balancing of the various factors cited in *Ndegwa* and *Sneil* is not authorized in determining the sufficiency of the content or adequacy of the notice provided under the principles of Due Process as interpreted in *Mullane*, as a balancing of factors test is not used to determine the adequacy of notice under constitutional Due Process principles. *Dusenbery*,

534 U.S. at 168.

One court has applied the *Mullane* standard and found that the repudiation of a general rule that the government must always provide affirmative notice of the right to and procedures for requesting a hearing in *West Covina* does not mean that “statutory or public notice” (notice by publicly available statutes and case law) is always sufficient to satisfy due process; there is still a duty to apply the *Mullane* standard to determine whether, under the circumstances, the notice was reasonably calculated to provide notice. *Grayden v. Rhodes*, 345 F.3d 1225, 1242-1244 (11th Cir. 2003) (finding that “statutory notice” by way of publicly available municipal ordinances was insufficient when tenants were given 36 hours to vacate a condemned building). *But compare Arrington v. Helms*, 438 F.3d 1336 (11th Cir. 2006) (where the same court found that “statutory notice” of appeal rights to custodial parents was consistent with *Mullane* when the custodial parents had 30 days to request a hearing, were provided a brochure describing child support rights, and were provided with a 24-hour automated voice response hotline and a web site to educate themselves as to their rights).

The *United Asset Mgmt. Trust Co.* case, which has been followed in *Harpagon Mo, LLC v. Clay County Collector*, 335 S.W.3d 99 (Mo. App., W.D. 2011), and *Harpagon MO LLC v. Bosch*, Appeal No. WD72834 (Mo. App., W.D. August 30, 2011) (now pending in this Court), Slip Op. at 6-7, contains the correct interpretation of § 140.405, RSMo, and the constitutional principles of Due Process that shape how that statute should be interpreted. Below is a summary of *United Asset Mgmt. Co.*:

The *United Asset Mgmt. Trust Co.* case contains a section denominated, Historical Background, wherein, among other things, the *Hobson* decision is recognized as binding precedent providing a redemption period that extends beyond the expiration of the one year period following the sale. *United Asset Mgmt. Trust Co.*, 322 S.W.3d at 163-167.

United Asset Mgmt. Trust Co. analyzed the opinions of the Missouri Court of Appeals, Eastern District, in *Keylien*, *Eason*, *Hames*, *Valli*, and *Brooks*, as well as a decision from the Missouri Court of Appeals, Southern District, namely *Drake Development & Construction LLC v. Jacob Holdings, Inc.*, 306 S.W.3d 171 (Mo. App., S.D. 2010)²⁵, and noted as follows:

Thus, *Keylien* held that the notice required by § 140.405 must inform recipients not merely of their right to redeem, as required by express wording of the statute, but also provide legal advice as to what period of redemption exists depending on what type of tax sale was conducted. *Id.* In other words, according to *Keylien*, the notice sent after a first or second offering tax sale must inform those receiving it that they have a right to redeem during the one-year after the date of the tax sale.

Id. On the other hand, *Keylien* asserts that the notice of the right

²⁵ See also *Crossland v. Thompson*, 317 S.W.3d 635 (Mo. App., S.D. 2010) (following *Drake Development*).

to redeem after the third offering tax sale must inform the recipients that they have ninety-days from the date the purchaser files the affidavit with the County Collector in which to redeem. *Id.* As noted supra, § 140.405 nowhere provides that the notices required by the statute must state anything other than that the recipient has a "right to redeem."

As can be seen, *Keylien*, *CedarBridge*, *Hames*, and *Drake Development* all find § 140.405 notices defective because the content of the notices was deemed insufficient. However, none of those cases addressed what content is required by statute or due process. Rather, they *assumed* that the § 140.405 notice must contain specific details. As suggested supra, a review of the statute and case law leads to a different conclusion.

United Asset Mgmt. Trust Co., 322 S.W.3d at 171-172 (footnote 9 omitted) (emphasis in original).

United Asset Mgmt. Trust Co. looked to the language of § 140.405, RSMo, requiring tax sale purchasers to give notice of the "right to redeem" and asked, what, if anything, the notice must state beyond informing the recipient that he or she has a "right to redeem" the property. *United Asset Mgmt. Trust Co.*, 322 S.W.3d at 172-173.

United Asset Mgmt. Trust Co. looks to fundamental constitutional principles of Due Process as a source of direction in interpreting § 140.405, RSMo. *United Asset Mgmt. Trust Co.*, 322 S.W.3d at 173. *United Asset Mgmt. Trust Co.* found that *City of West Covina v. Perkins*, 525 U.S. 234, 119 S.Ct. 678 (1999) “stands for the basic proposition that individualized notice of the procedures for protecting one’s property interest is unnecessary to comply with due process where that information is readily available in ‘published, generally available state statutes and case law.’” 322 S.W.3d at 174 (*quoting, West Covina*, 525 U.S. at 241, 119 S.Ct. at 681).

United Asset Mgmt. Trust Co. also found that giving delinquent taxpayers and other interested parties at least 90 days in which to ascertain and exercise their redemption rights was “sufficient under all the circumstances to comply with due process.” *United Asset Mgmt. Trust Co.*, 322 S.W.3d at 175. *United Asset Mgmt. Co.*, 332 S.W.3d at 175, cites *Arrington v. Helms*, 438 F.3d 1336 (11th Cir. 2006) in support of that proposition.

After analyzing various cases construing the requirements of the Due Process Clause (including *State v. Goodbar*, 297 S.W.2d 525, 528 (Mo. 1957) (*quoting Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950) by stating “[d]ue process does not require notice that some particular step must be taken or that certain procedure be followed; the opportunity afforded is to make a choice of whether to ‘appear or default, acquiesce or contest’”) and *Bishop v. Bd. Of Educ. of Francis Howell Sch. Dist.*, 575

S.W.2d 827, 829 (Mo. App., E.D. 1978) (legal advice need not be given in the notice, and the recipient “must be held to a knowledge of the law”)), the Court stated:

Applying these principles to property tax sales, in particular post-sale notices regarding redemption rights pursuant to § 140.405, apprising record owners and lienholders "of the pendency of the action," *Schwartz*, 665 S.W.2d at 935, means informing them that they have a right to redeem. Consistent with *West Covina*, *Goodbar*, and *Bishop*, there is no due process requirement to inform those receiving notice of the specific time limits applicable for redemption, the specific procedures that must be followed, or any other details, nor is there any such requirement in § 140.405. Those matters are readily available to all persons by "published, generally available state statutes and case law." *West Covina*, 525 U.S. at 241, 119 S.Ct. at 681. To the extent this conclusion is inconsistent with holdings in *Keylien*, *CedarBridge*, *Hames*, and *Drake Development*, we respectfully decline to follow those cases.

United Asset Mgmt. Trust Co., 322 S.W.3d at 175. See also *Harpagon MO, LLC v. Clay County Collector*, 335 S.W.3d at 105; *Bosch*, Slip Op. at 6-7 (now pending in this Court).

This case concerns the right to redeem under § 140.340, RSMo. Under § 140.340, RSMo, there is no right to a hearing to determine whether one may redeem; before the right to redeem expires, an interested party has an incontestable and absolute right to redeem by paying redemption funds to the county collector, a presumably unbiased governmental official. That uncontested and absolute right to redeem either exists or it does not exist. *Ndegwa* states the following:

The rule of proper notice by one who would affect the rights of a property owner is to advise that owner of the “pendency,” not the “existence,” of an action. *Schwartz*, 665 S.W.2d at 934. The word “existence” is static. The word “pendency” has a time component. A pending action is one that is approaching, imminent, around the corner. Correspondingly, notice of the pendency, as opposed to the existence, of an action implies notice of a time component in order to be reasonable.

Ndegwa, Slip Op. at 15-16.

In *Schwartz v. Dey*, 665 S.W.2d 933, 934 (Mo. Banc 1984), *subsequent appeal*, 870 S.W.2d 42 (Mo. Banc 1989), this Court stated:

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), the Supreme Court stated that where a property interest is at stake, a party must be

afforded that degree of "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314, 70 S.Ct. at 657.

Proceedings under the Jones-Munger Act, Chapter 140, RSMo, do not contest the right of the delinquent taxpayer or other interested parties to redeem their interest in property. The delinquent taxpayer or other interested party is not faced with anyone contesting their right to redeem. No one asks the delinquent taxpayer to acquiesce to their right to redeem. The delinquent taxpayer cannot default on their right to redeem. Giving delinquent taxpayers notice of their right to redeem, as required by the plain language of § 140.405, RSMo, gives notice to delinquent taxpayers or other interested parties of their right to redeem, so that they may exercise that right or not as they see fit. The "pendency" versus "existence" distinction made in *Ndegwa* means little in the context of proceedings under the Jones-Munger Act.

Because interest is earned on all or a part of the amount paid for the tax sale certificate and on subsequent taxes paid by the tax sale purchaser, § 140.340, RSMo, the amount of redemption funds to be paid is not static but changes from day to day. Tr. at 31-32. This means that: (1) it is impossible to exercise the right of redemption under § 140.340, RSMo, without contact with the county collector's office; and (2) it is impossible to inform interested parties in a § 140.405 notice of the amount needed to redeem their interest without knowing the proposed date of the redemption. Prospectively giving a universally applicable

notice of the duration of the right to redeem that is dependent upon the date of issuance of an as-yet not issued collector's deed is impossible or extremely difficult, as set forth elsewhere in this Brief. Notice must be mailed at least 90 days before the collector's deed can be issued. Section 140.405, RSMo. None of these circumstances make the failure to give notice of the duration of the right of redemption unreasonable under *Mullane*, *West Covina*, *Dusenbery*, and *United Asset Mgmt. Trust Co.*, as well as *State v. Goodbar*, 297 S.W.2d 525 (Mo. 1957) and *Bishop v. Bd. of Educ. of Francis Howell Sch. Dist.*, 575 S.W.2d 827 (Mo. App., E.D. 1978).

Ndegwa v. KSSO, LLC, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18, and *Sneil, LLC v. TYBE Learning Center, Inc.*, Appeal No. ED96828 (Mo. App., E.D. February 28, 2012), Slip Op. at 8, express concern that allowing tax sale purchasers to set the date for a property owner to "reclaim" property promotes the potential for error, uncertainty, and deception.

No one can redeem without contact with the collector's office, as the collector calculates the redemption amount and collects the redemption funds. Section 140.340, RSMo. Wholesale deception of delinquent taxpayers as to their rights of redemption of the type feared in *Ndegwa* would necessarily depend upon the involvement of the county collector.

Foreclosure of rights of redemption from enforcement of a lien by private parties is delegable and is not an exclusively public function. *Flagg Brothers v. Brooks*, 436 U.S. 149,

98 S.Ct. 1729, 56 L.Ed.2d 185 (1978). Missouri law has long allowed foreclosure of the rights of redemption under deeds of trust by non-judicial action (without involvement of any governmental official), without notice of the duration of statutory post-sale redemption rights. *See* §§ 443.290 to 443.440, RSMo. Sections 443.410, 443.420, 443.430, and 443.440, RSMo, create a one-year post-sale right of redemption from the non-judicial foreclosure of deeds of trust or mortgages; provided that, the debtor gives notice of the intent to exercise the post-sale right of redemption at or prior to the sale and posts bond and pays the indebtedness during the one-year period, among other requirements. A holding that Due Process requires accurate notice of the duration of post-sale statutory rights of redemption from foreclosure sales may result not only in upsetting the title of properties sold at tax sales but also upsetting a very large number of properties sold at non-judicial foreclosures of the right to redeem under deeds of trust in Missouri.

Allowing tax sale purchasers the flexibility to decide when they have completed their statutory and constitutional duties to provide notice allows tax sale purchasers greater chances for compliance with statutory and constitutional requirements. *See, e.g. Jones v. Flowers*, 547 U.S. 220 (2006) and *Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009) (requiring additional reasonable steps be taken, if practicable, if certified mail is returned). The enactment of H.B. 1316 requiring documentation of various steps taken by the tax sale purchaser in foreclosing tax liens lessens the chances for error, uncertainty or deception. *See, e.g. § 140.405.5(3)*, as enacted by HB 1316 (requiring copies of the envelopes containing

notices of tax sale redemption rights as they appear immediately prior to mailing to be attached to the affidavit filed as part of the application for a collector's deed).

Ndegwa v. KSSO, LLC, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18, does nothing to further certainty in the law, despite its language otherwise. From 1942 to 2006, the duration of the right of redemption was undisputedly determined under *Hobson* and the cases following *Hobson*. The only significant changes in the relevant statutes interpreted in *Hobson* were amendments in 2003 that changed certain time periods but did not change the operative language of those statutes.

In 2006, *Valli v. Glasgow Enterprises, Inc.*, 204 S.W.3d 273 (Mo. App., E.D. 2006) was handed down. The opinion in *Valli* does not recite definitively whether the sale involved in that case was a first, second or third offering delinquent tax sale under the Jones-Munger Act, Chapter 140, RSMo. See *Keylien*, 284 S.W.3d at 614 (“Whether or not the redemption notices in *Valli* and *Brooks* were accurate in describing the sales in those cases as third offering sales, the notice requirement set out by this court in the opinions in those cases is the requirement for redemption notices in third offering sales.”). From the hand-down date of *Valli* until 2009, when *Keylien* correctly “revised” *Valli* to apply only to third sales, there was no certainty as to whether *Hobson* and its progeny or *Valli* and *Brooks* determined the duration of the right of redemption. Since 2009 when *Keylien* determined that the duration of the right of redemption is specified in § 140.340.1, RSMo, there has been no certainty as to whether *Hobson* and its progeny or *Keylien* and its progeny determined the duration of the

right of redemption. Following the long-established precedent of this Court originating with *Hobson* and continuing the manner in which the relevant statutes have been interpreted and applied for approximately seventy years under principles of *stare decisis* promotes stability, adherence to precedent, and settled rules that are necessary and necessarily relied upon in the transfer of real estate. *See Ndegwa v. KSSO, LLC*, Case No. ED96315 (Mo. App., E.D. October 11, 2011), Slip Op. at 18.

POINT II(E):

**SECTION 140.520, RSMO, PROHIBITS INVALIDATION OF THE
COLLECTOR'S DEED FOR THE REASONS STATED IN THE TRIAL
COURT'S JUDGMENT**

The trial court erred in denying Plaintiff relief under Count I of Appellant's Petition on the ground that the Notice Letters did not inform Respondents how long they had to exercise their right to redeem or be forever barred from doing so, as said purported defects are mere irregularities in the tax sale proceedings that cannot be the basis for invalidation of the Collector's Deed under § 140.520, RSMo, under the facts and circumstances of this case.

Appellant incorporates the argument made in Point I(B) of its Brief herein as if fully set forth.

Section 140.420, RSMo, provides that collector's deeds issued under the provisions of the Jones-Munger Law, Chapter 140, RSMo, "shall vest in the grantee an absolute estate in fee simple, subject, however, to [certain encumbrances not relevant here]". Section 140.460, RSMo, provides that collector's deeds "shall be prima facie evidence ... of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings, ..., and prima facie evidence of a good and valid title in fee simple in the grantee of said deed." *Mitchell v. Atherton*, 563 S.W.3d 13, 17-18 (Mo. Banc 1978) and *Stadium West Properties v. Johnson*, 133 S.W.3d 128, 136 (Mo. App., W.D. 2004) have interpreted § 140.460, RSMo, to mean that a collector's deed is *prima facie* evidence of the regularity of

notice in compliance with the law, because notice and sale would be “prior proceedings” under § 140.460, RSMo, and relevant case law places the burden upon those who wish to overcome the *prima facie* evidence of regularity and validity presented by a collector’s deed to offer evidence at variance with the presumptive fee simple absolute title conveyed by the Collector’s Deed to Appellant. *Stadium West Properties v. Johnson*, 133 S.W.3d 128, 136 (Mo. App., W.D. 2004).

Section 140.520, RSMo, provides, in part:

No ... **mere irregularity** of any kind in any of the proceedings, shall invalidate any such proceeding, or the title conveyed by the tax deed; nor shall **any failure of any officer or officers to perform the duties assigned him or them, on the day or within the time specified**, work any invalidation of any such proceedings, or of such deed, **Acts of officers de facto shall be as valid as if they were officers de jure**,

(Emphasis added.)

The facts are:

- (1) TYBE did not pay real estate taxes due for Parcel I for 2003, 2004 and 2005, see the Tax Sale Certificate of Purchase being part of Plaintiff’s Parcel I Trial Exhibits Nos. 3 and 8 and Plaintiff’s Parcel I Trial Exhibit No. 13, respectively.
- (2) Appellant paid TYBE’s taxes at the tax sale by purchasing the Tax Sale

Certificate of Purchase, and the tax sale proceeds were distributed to governmental entities in 2006, Tr. at 36, 42; Parcel I Trial Exhibit No. 3, pages 30-31.

(3) Respondents received the Notice Letters on August 28, 2007, LF at 627.

(4) The St. Louis County Collector would have allowed Respondents to redeem at any time prior to the issuance of the Collector's Deed to Appellant on December 6, 2007, under the Collector's understanding of the applicable law in 2007. Tr. at 34-35, 48, 53, 57, 84-85, 91-92.

(5) Respondents have not shown that any certificate of redemption that would have been issued by the St. Louis County Collector to Respondents after August 26, 2007 would be invalid.

(7) Carmen Austell began the redemption process for TYBE by requesting and receiving redemption figures as of September 28, 2007 from the St. Louis County Collector, however, TYBE failed to redeem prior to the issuance of the Collector's Deed. Page 26 of Plaintiff's Parcel I Trial Exhibit No. 3 (the St. Louis County Collector's file); Tr. at 49-51; LF at 630.

(8) Nothing in the record shows that Respondents were prejudiced in the exercise of their rights of redemption that existed in fact prior to December 6, 2007, by any actions of Appellant, because Respondents continued to be able to redeem after August 26, 2007 under the practices of the St. Louis County Collector following the *Hobson* case, even if *Hobson* is no longer good law.

Based on these facts, Appellant concludes that Respondents have not shown that the purported defects complained of are anything more than technical objections, or mere irregularities, that are not a basis for invalidation of the Collector's Deed under § 140.520, RSMo.

Further, tax sale purchasers are *de facto* officers of the government when they are attempting to perform duties assigned to them by § 140.405, RSMo. *See Scherleth v. Hardy*, 280 S.W.3d 47 (Mo. banc 2009). Section 140.405, RSMo, delegates the noticing function in the tax lien foreclosure process to private purchasers of tax liens to avoid imposing the cost of noticing on the county collectors. *M & P Enterprises, Inc. v. Transamerica Financial Services*, 944 S.W.2d 154, 157 (Mo. banc 1997). Section 140.405, RSMo, appoints tax sale purchasers as *de facto* officers in the exercise of the duties assigned to them by that statute. The purported failure of Appellant to "perform the duties assigned him or them, on the day or within the time specified" in § 140.405, RSMo, should not in and of itself be a basis for invalidation of the collector's deed under § 140.520, RSMo. Respondents cannot show how the purported deficiencies in the content of the Notice Letters prejudiced their rights of redemption, because even though the Notice Letters did not inform them of their one-year right of redemption, the evidence was that Respondents could have redeemed up until December 6, 2007, based upon the practice of the St. Louis County Collector in following the *Hobson* case.

POINT II(F)

THE NOTICE LETTERS GAVE NOTICE OF THE RIGHT OF REDEMPTION

The Notice Letters mailed August 27, 2007 are structured as follows: (1) The subject line of the Notice Letters reads as follows: “RE: Notice of Right of Redemption Regarding 3645 Marietta Drive, Florissant, Missouri 63033.” (2) The first paragraph of the Notice Letters state that Appellant has retained Gebhardt Real Estate and Legal Services LLC with respect to the Tax Sale Certificate of Purchase on the subject property, commonly known as 3645 Marietta Drive, Florissant, Missouri 63033. (3) The second paragraph of the Notice Letters state that under § 140.405, RSMo, a title examination was performed, and said Notice Letters enclose and incorporate by reference both the notice statute, § 140.405, RSMo, and the Letter Report dated as of July 26, 2007.²⁶ (4) The third paragraph of the Notice Letters

²⁶ *Sneil* appears to criticize the use of the word “perusal” in the Notice Letters. *See Sneil*, Slip Op. at 9. The version of the *Merriam-Webster Dictionary* found by counsel for Appellant on the Web defines the verb “peruse” as follows:

1 a: to examine or consider with attention and in detail : study

b: to look over or through in a casual or cursory manner

2: read; especially: to read over in an attentive or leisurely

manner

The etiology of the word “peruse” indicates the origin of the word is from the Latin “per” meaning thoroughly.

informs the recipient that on August 28, 2006, the St. Louis County Collector of Revenue sold a Tax Sale Certificate of Purchase on Parcel I to Sneil LLC for \$41,700.00, and encloses and incorporates by reference a copy of the Tax Sale Certificate of Purchase. (5) The fourth paragraph of the Notice Letters gives notice pursuant to § 140.405, RSMo, of the intention of Sneil LLC to obtain a collector's deed to the subject property. (6) The fifth paragraph of the Notice Letters states: "If you wish to redeem your interest in the above-referenced property, you should contact the Collection Division of the St. Louis County Department of Revenue at 41 South Central Avenue (Street Level), Clayton, Missouri 63105, Telephone (314) 615-4207, Fax (314) 615-5428." (7) The last paragraph of the Notice Letters states: "If you have any questions regarding this matter, please contact the undersigned." Plaintiff's Parcel I Trial Exhibit No. 2, Tr. at 106; Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38; and Plaintiff's Parcel I Trial Exhibit No. 8, Tr. at 117.

The Tax Sale Certificate of Purchase, a copy of which is attached to and incorporated into the Notice Letters, states as "the time when the purchaser will be entitled to a deed for said land," §140.290.2, RSMo:

At any time after the expiration of one year from the date of this sale, the above-named purchaser, his heirs or assigns, will upon application and compliance with the provisions of law pertaining thereto be entitled to a Deed of Conveyance for any real estate herein described, which shall not have been

redeemed, provided, that on failure of the holder of this certificate to take our said deed, as entitled by law, and file the same of record within two years from the date of such sale, then and in that event the amount due such purchaser shall cease to be a lien on such lands so purchased as herein provided.

Plaintiff's Parcel I Trial Exhibit No. 3, page 23; Plaintiff's Parcel I Trial Exhibit No. 8, page 13.

The Notice Letters informed the delinquent taxpayers and other interested parties that Appellant intended to acquire a collector's deed, and the Notice Letters gave notice that the interested parties had a right to redeem the property and told them to contact the collector's office. A copy of § 140.405, RSMo, was enclosed with the Notice Letters and incorporated therein, so the Notice Letters gave notice of the content of that statute. Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38; Plaintiff's Parcel I Trial Exhibit No. 8, Tr. at 117. A copy of the Tax Sale Certificate of Purchase was enclosed with the Notice Letters and incorporated therein, which states the *Hobson* Redemption Period. Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38; Plaintiff's Parcel I Trial Exhibit No. 8, Tr. at 117. The Notice Letters in this case gave the addressee notice of the right to redeem and told the addressees to contact the Collector's Office. Plaintiff's Parcel I Trial Exhibit No. 2, Tr. at 106; Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38; and Plaintiff's Parcel I Trial Exhibit No. 8, Tr. at 117. These

Notice Letters gave notice of the right to redeem in compliance with § 140.405, RSMo, and applicable principles of Due Process.

CONCLUSIONS UNDER POINT II

The trial court erred in denying Plaintiff relief under Count I of Appellant's Petition on the ground that the Notice Letters did not inform Respondents how long they had to exercise their right to redeem or be forever barred from doing so, because: (A) There was no fixed one-year duration to Respondents' redemption rights under *Hobson*; (B) Appellant had no duty to legally advise Respondents of the duration of their redemption rights when the duration of those redemption rights can vary depending on circumstances that may not or cannot be known by the tax sale purchaser; (C) Appellant could not give advance notice of the date, if any, that Appellant would become authorized to acquire the Collector's Deed; (D) Section 140.405, RSMo, and the Due Process Clause of the United States Constitution do not require Notice Letters to inform addressees of the specific time limits applicable for redemption, the specific procedures that must be followed, or any other details; (E) the purported defects in the Notice Letters are mere irregularities in the tax sale proceedings that cannot be the basis for invalidation of the Collector's Deed under § 140.520, RSMo, under the facts and circumstances of this case; and (F) the Notice Letters gave notice of the right to redeem, which is all that § 140.405, RSMo, requires.

III.

THE TRIAL COURT ERRED IN DENYING APPELLANT RELIEF UNDER COUNT I OF APPELLANT'S PETITION WITHOUT MAKING MATERIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY APPELLANT, BECAUSE SUCH FINDINGS AND CONCLUSIONS ARE REQUIRED BY RULE 73.01 AND SUCH LACK OF FINDINGS OF FACT AND CONCLUSIONS OF LAW MATERIALLY AFFECTS THE MERITS OF THE ACTION AND/OR INTERFERES WITH APPELLATE REVIEW.

The trial court's Judgment invalidates the Collector's Deed without complying with Rule 73.01.

Appellant filed its initial Request for Findings of Fact and Conclusions of Law as to Counts I and II of Appellant's Petition on or about November 21, 2008. LF at 68. Prior to the commencement of trial on February 14, 2011, Appellant filed its Second Request for Findings of Fact and Conclusions of Law as to Count I of Appellant's Petition. LF at 422-451. The Second Request contains 46 requests for findings of fact and 60 requests for conclusions of law. LF at 422-451. The Second Request was made on the record before the introduction of evidence. Tr. at 2. The Second Request was timely filed and made.

Waiver Issues Under Rule 78.07(c)

Respondent TYBE Learning Center Inc. has in the Missouri Court of Appeals, Eastern District, cited *Country Club of the Ozarks LLC v. CCO Investments, LLC*, 338 S.W.3d 325,

336 (Mo. App., S.D. 2011) and *Coffman v. Coffman*, 300 S.W.3d 267, 273 (Mo. App., W.D. 2009) in support of its claim that Appellant waived any right to appellate review of the failure of the trial court to make the requested findings of fact and conclusions of law under Rule 78.07(c), which states:

(c) In all cases, allegations of error relating to the form or language of the judgment, including the failure to make statutorily required findings, must be raised in a motion to amend the judgment in order to be preserved for appellate review.

The failure to make the requested findings of fact and conclusions of law in this case does not constitute an allegation of error relating to the form or the language of the judgment, but rather this allegation of error takes issue with the legal justification and substance of the Judgment. Only allegations of error relating to the form or language of the judgment trigger Rule 78.07(c), which includes allegations of error relating to statutorily required findings of fact. Rule 73.01(d) states: “Except as provided in Rule 78.07(c), a party may, **but need not**, file a motion for new trial or a motion to amend the judgment or opinion, or both” (Emphasis added.) Rule 78.07(b) states: “Except as otherwise provided in Rule 78.07(c), in cases tried without a jury or with an advisory jury, neither a motion for a new trial nor a motion to amend the judgment or opinion is necessary to preserve any matter for appellate review.” The failure to make requested findings of fact and conclusions of law in this case

go to the substance of the Judgment, not the form or language of the Judgment. Given the Judgment that the trial court handed down, it would have been a futile act for Appellant to file a motion to amend the judgment to allow the trial court to “correct” the form or language of the Judgment by making the requested findings of fact and conclusions of law that had already been previously ignored by the trial court, presumably on the basis that the requested findings are not necessary or material to properly decide this case.

Lack of Findings of Fact

A trial court need not make findings of fact unless the movant clearly and unequivocally specifies the controverted fact issues. *Berlin v. Pickett*, 100 S.W.3d 163, 167 (Mo. App., W.D. 2003). In this case, the requests for findings of fact were detailed and specific and related to controverted material facts. The Judgment of the trial court fails to make detailed findings of fact concerning the Notice Letters, including where and to whom the Notice Letters was mailed (Request 18 of the Second Request, LF at 428-429), the exact content of the Notice Letters (Request 19 of the Second Request, LF at 429-431), whether a copy of § 140.405, RSMo, was enclosed with the Notice Letters (Request 20 of the Second Request, LF at 431), whether a copy of the Letter Report dated as of July 26, 2007 was enclosed with the Notice Letters (Request 21 of the Second Request, LF at 432), whether a copy of the Tax Sale Certificate of Purchase issued to Appellant with respect to Parcel I was enclosed with the Notice Letters (Request 22 of the Second Request, LF at 432), what signed “Green Cards” were returned to Gebhardt Real Estate and Legal Services, LLC (Requests 23,

24, 25, 26, 27, 28, and 29 of the Second Request), whether Kevin Rehg posted a Notice of Tax Sale and Possible Rights of Redemption for 3645 Marietta Drive, Florissant, Missouri 63033 on that property, and the content of that Notice posted (Requests 32 and 33 of the Second Request, LF at 432-433).

Paragraph 8 of the Judgment of the trial court is the principal part of the Judgment that addresses many, if not all, of these requests and is wholly inadequate, in that the Judgment only quotes a small portion of the Notice Letters and does not address any of these other requests for findings of fact. LF at 627-628.

Appellant asked for a finding of fact as to whether Carmen Austell requested redemption figures from the St. Louis County Collector. See Request 43 of the Second Request, LF at 438. Substantial evidence that this occurred was presented to the trial court. Page 26 of the St. Louis County Collector's File (Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38); Testimony of Rich Robison, Tr. at 49-51, 81-82, 84-86.

Carmen Astell testified as follows:

Q. When you received your notice from Sneil on or about August 28, 2007, what, if anything, did you do with it?

A. I immediately called my attorney, Rufus Tate.

Tr. at 147.

Requests 35 and 36 of the Second Request ask the trial court to find whether representatives of Respondents or Union Planters Bank contacted Phillip K. Gebhardt regarding the taxes concerning Parcel I after the mailing of the Notice Letters on August 27,

2007. LF at 435. The trial court made no findings in response to these requests; however, there is no evidence in the Record on Appeal that Rufus Tate, Carmen Austell or any other representative of TYBE contacted Phillip K. Gebhardt after Carmen Austell received the Notice Letters on August 28, 2007. There is no evidence in the Record on Appeal that Rufus Tate contacted the St. Louis County Collector's Office on behalf of Respondent TYBE Learning Center Inc. regarding its redemption from the tax sale process. There was evidence that Carmen Austell, as a representative of TYBE, requested redemption figures from the St. Louis County Collector's Office as of September 28, 2007. Page 26 of the St. Louis County Collector's File, Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38; Testimony of Rich Robison, Tr. at 49-51, 81-82, 84-86. The redemption calculations of the St. Louis County Collector showed that as of September 28, 2007, the amount of \$41,606.18 was needed to redeem in addition to the surplus of \$4,166.00 held by St. Louis County. Page 26 of the St. Louis County Collector's File, Plaintiff's Parcel I Trial Exhibit No. 3, Tr. at 38. There was abundant evidence that the St. Louis County Collector would have allowed TYBE to redeem at any time prior to the issuance of the Collector's Deed on December 6, 2007. Testimony of Rich Robison, Tr. at 34-35, 48, 57, 84-85, 91-92.

If Rufus Tate had been contacted by Carmen Austell immediately after she received the Notice Letters on August 28, 2007, why is there no evidence that Rufus Tate contacted Phillip K. Gebhardt and/or the St. Louis County Collector's Office to arrange for redemption of Parcel I prior to December 6, 2007? If Carmen Austell had contacted Rufus Tate on or

about August 28, 2007 regarding the redemption of the subject property from the tax sale, Rufus Tate, as a competent attorney, would have made contact with the St. Louis County Collector's Office and/or Phillip K. Gebhardt regarding the redemption rights of his client, TYBE Learning Center, Inc. There is no evidence of such communications. Carmen Austell was not truthful regarding her activities after receiving the Notice Letters.

Lack of Conclusions of Law

Even a non-specific request for conclusions of law amounts to a request for the trial court to explain its decision. *Berlin*, 100 S.W.3d at 167. In this case, Appellant made detailed requests for conclusions of law, including: (1) requests for conclusions of law concerning the presumptive effects of the issuance of the Collector's Deed to Appellant and the burden and standard of proof (Requests 53, 54, 55, 56, 57, and 58 of the Second Request, LF at 439-440), (2) whether any purported defects in the tax lien foreclosure procedures and processes used by Appellant are mere irregularities in said proceedings that are not a basis for invalidation of the Collector's Deed to Appellant under § 140.520, RSMo (Request 59 of the Second Request, LF at 440), (3) requests for conclusions of law concerning the sufficiency of the pleading of affirmative defenses by TYBE (Requests 60-62 of the Second Request, LF at 441), (4) requests for conclusions of law concerning the failure of Appellant to register as a foreign limited liability company under § 347.163, RSMo (Requests 63, 64 and 65 of the Second Request, LF at 441), (5) requests for conclusions of law concerning the duration of the right of redemption after a first or second offering delinquent tax sale offering under the

Jones-Munger Act (Requests 66, 67, 68, 69, 70, 71, 72, and 73 of the Second Request, LF at 442-444), (6) requests for conclusions of law concerning the content of notices of tax sale redemption rights under § 140.405, RSMo (Requests 74, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 84 of the Second Request, LF at 444-446), and (7) requests for conclusions of law concerning the application of the Takings and Due Process Clauses to the issuance of the Collector's Deed to Appellant (Requests 98, 99, 100, 101, 102, and 103 of the Second Request, LF at 448-449).

Argument

Failure of a court to prepare specified findings of fact as requested by counsel is error, and mandates reversal when such failure materially affects the merit of the action or interferes with appellate review. *Lattier v. Lattier*, 857 S.W.2d 548, 549 (Mo. App., E.D. 1993).

In paragraph 8 of the trial court's Judgment, the trial court found that the only part of the Notice Letters "regarding redemption" was a single sentence stating:

"If you wish to redeem your interest in the above-referenced property, you should contact the Collection Division of the St. Louis County Department of Revenue ... Telephone (314) 615-4207, Fax (314) 615-5428."

LF at 628.

The subject line of the Notice Letters reads as follows: “RE: Notice of Right of Redemption Regarding 3645 Marietta Drive, Florissant, Missouri 63033.” The Notice Letters give notice of the intention of Appellant to obtain a collector’s deed (which under the *Hobson* line of cases terminates the right of redemption). The Notice Letters incorporate by reference an enclosed copy of § 140.405, RSMo, which requires that the notice be sent at least 90 days prior to the date Appellant becomes authorized to obtain a collector’s deed. The Notice Letters incorporate by reference an enclosed copy of the Tax Sale Certificate of Purchase which contains St. Louis County’s statement of the *Hobson* Redemption Period. Despite those facts, the trial court purports to find that the Notice Letters do not inform Respondents of how long they had to redeem their interests. The lack of findings regarding the Notice Letters and the Posting of Notice has affected the trial court’s conclusions regarding the merits of the action and/or interferes with appellate review of the Judgment.

In addition, to determine whether § 140.520, RSMo, applies to these facts, the trial court should have determined whether Carmen Austell obtained redemption figures as of September 28, 2007 from the St. Louis County Collector, as requested by Appellant.

If the requested findings of fact and conclusions of law related to notice had been honored, there should have been additional findings, including the following: (1) that the tax sale certificate was attached to and incorporated as part of the notice, and that the tax sale certificate stated the *Hobson* Redemption Period; (2) that the subject line of the Notice Letters read: “RE: Notice of Right of Redemption Regarding 3645 Marietta Drive,

Florissant, Missouri 63033”, Plaintiff’s Parcel I Trial Exhibit No. 3, page 18; (3) that the Notice Letters gave notice of the intention of Appellant to obtain a collector’s deed to the property; and (4) that the Notice Letters incorporate by reference § 140.405, RSMo, which states that the notice must be sent at least 90 days prior to the time the tax sale purchaser is authorized to acquire the deed to the property.

Further, the trial court made no findings or conclusions related to § 140.520, RSMo, such as: (1) whether TYBE obtained redemption figures, (2) whether the County Collector would have allowed redemption up until December 6, 2007, and (3) whether there were any post-notice communications between counsel for Appellant and any representative of Respondents. These facts are part of Appellant’s claim that any purported defects in the Notice Letters are mere irregularities that did not prejudice the rights of Respondents to redeem under § 140.520, RSMo.

Further, findings of fact and conclusions of law are treated differently under Rule 73.01. *Cohen v. Cohen*, 178 S.W.3d 656, 663 (Mo. App., W.D. 2005); *Dorman v. Dorman*, 91 S.W.3d 167, 171 (Mo. App., W.D. 2002). The trial court was requested to make conclusions of law concerning whether the *Hobson* Redemption Period applied (Request 66 of the Second Request, LF at 442), among other things, and the trial court ignored the applicable law by failing to make those requested conclusions of law.

CONCLUSIONS UNDER POINT III

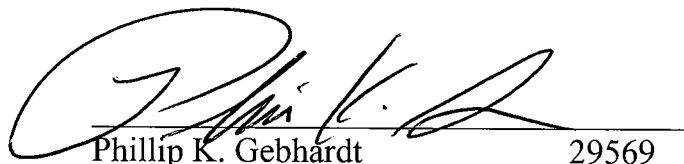
The trial court erred in entering its Judgment without making the requested findings of fact and conclusions of law required by Rule 73.01.

CONCLUSIONS OF THIS BRIEF

For the foregoing reasons, Appellant concludes that the trial court erred in denying Appellant relief under Count I of Appellant's Petition. This Court should reverse the trial court's Judgment, and this Court should remand this matter for entry of a judgment consistent with such instructions as this Court may deem appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that electronic mail, together with an attachment containing an electronic version of the Corrected Appellant's Substitute Brief in pdf form was sent to the following persons on the 23 day of March, 2012: to Rufus J. Tate, Jr. at tatelawfirm@gmail.com, to Deborah Jean Volmert at debbievolmert@sbcglobal.net, and to Stanley J. Schnaare at schnaarelaw@sbcglobal.net.

A handwritten signature in black ink, appearing to read "J. Michael K. P.", written over a horizontal line.

COMPLIANCE CERTIFICATION

In compliance with Rule 84.06(c), the undersigned does hereby certify that:

1. To the best of the undersigned's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the claims, defenses, requests, demands, objections, contentions, or arguments stated herein are not presented or maintained for any improper purpose; that said claims, defenses, requests, demands, objections, contentions, or arguments stated herein are warranted by existing law or a non-frivolous argument for the extension, modification or reversal of existing law or the establishment of new law; that the allegations and other factual contentions stated herein have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and that the denials of factual contentions made herein are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

2. To the best of the undersigned's knowledge, information and belief, this brief complies with the limitations contained in Rule 84.06(b).

3. To the best of the undersigned's knowledge, information and belief, this Brief contains 29,550 words, more or less, according to the Word word-processing program used to draft this Brief.

4. The number of lines in this brief is provided, as this Brief was not prepared with mono-spaced type, but was prepared using the Word word-processing program with full justification of line spacing.

